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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 141.

JUAN R. GARZOT AND FAUSTINO R. FUERTES, COPARTNERS UNDER THE FIRM NAME OF GARZOT & FUERTES, APPELLANTS,

vs.

MARIA RIOS DE RUBIO.

No. 142.

VICTOR BURSET, PETRONILA RIOS DE NOYA AND HER HUSBAND, FRANCISCO NOYA, APPELLANTS,

vs.

MARIA RIOS DE RUBIO.

FILED OCTOBER 24, 1908.

No. 604.

VICTOR BURSET, PETRONILA PATRICIA RIOS, JOINED BY HER HUSBAND, FRANCISCO NOYA; JUAN R. GARZOT AND FAUSTINO R. FUERTES, COPARTNERS UNDER THE FIRM NAME OF GARZOT & FUERTES; CATALINA ROMAGUERA, ET AL., APPELLANTS,

vs.

MARIA RIOS DE RUBIO.

FILED FEBRUARY 6, 1909.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

(20,435, 20,436, and 21,007.)

(20,435 and 20,436.)

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

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1 THE UNITED STATES OF AMERICA,
District of Porto Rico, ss:

At a stated term of the District Court of the United States for Porto Rico, within and for the district aforesaid, begun and held at the Court rooms of said Court in the City of San Juan, on the second Monday of April, being the ninth day of that month, in the year of our Lord One Thousand nine hundred and six, and of the independence of the United States of America the one hundred and thirtieth.

Present, the Hon. Chas. F. McKenna, Judge.

Among the proceedings had were the rendition of a Final Decree in the following case, to wit:

Equity. No. 196.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Be it remembered, that heretofore, to wit, on the thirtieth day of April, 1903, came the Complainant by her attorneys and filed her Bill of Complaint in this cause, which said Bill is as follows, to wit:

Equity. No. 196.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Maria Rios de Rubio, a widow, resident of San Juan, Porto Rico and a loyal subject of the King of Spain, brings this her bill against Petronila Patricia Rios de Noyas, a resident and citizen of Porto Rico and her husband, Francisco Noyas, a resident of Humacao, Porto Rico and a citizen of said Island of Porto Rico; Victor Burset, a citizen of Porto Rico and resident of the city of San Juan in said Island; Santiago R. Palmer a citizen of Porto Rico and a
2 resident of the said city of San Juan of said Island; Juan R. Garzo and Faustino Fuertes, composing the firm of Garzo and Fuertes, residents of Naguabo and subjects of the King of Spain; and the said Juan R. Garzo in his individual right; Manuel Padin y Otero, subject of the King of Spain, and residents of San Juan, P. R., composing the firm of Manuel Padin y Otero; and Enrique Cerecedo y Millan, a subject of the King of Spain and resident of San Juan, Porto Rico; and says:

First. Heretofore to wit, In the year 1875 Jose Maria Rios, Sr., the father of complainant herein, died in Porto Rico, leaving a surviving widow, to wit, Manuela Gutman and three children, to

wit, complainant herein and the said Petronila Patricia Rios de Noyas and one Jose Maria Rios, Jr., that the time of his death said José Maria Rios was the owner and in possession of a large amount of property, among which was the real estate hereinafter described and set out; that said Jose Maria Rios left no will but did leave a power to his said wife the said Manuela Gutman to execute a will in his name and that the said Manuela Gutman did thereafter and after the death of the said Jose Maria Rios, Sr., execute the power so as aforesaid conferred on her by her said husband and did declare and constitute as heirs of the said Jose Maria Rios complainant herein and the said Petronila Patricia Rios de Noyas and the said Jose Rios each of whom was at that time a minor, and did in the proper Court institute the necessary legal proceedings on said estate, but which said proceedings reached only a preliminary stage and were still pending at the time of the death of the said Manuela Gutman;

That the said property was a separate property of the said Jose Maria Rios theretofore derived by inheritance from his father and mother, and is described as follows:

A rural estate known by the name of "Yslote" or "Yslote Riballoá" composed of one hundred and fifty (150) cuerdas of first class land, equivalent to fifty-eight (58) hectares, ninety six (96) ares situated in the barrio Rio Abajo in the jurisdiction of Naguabo, bounded on the north by a branch of the Rio Abajo known as
3 Rio Viejo, which separates it from the lands of Mr. Juan Busó, now Mr. Juan Garzot, on the east by the same Rio Viejo, which separates it from a lot known as the Ramirez lot belonging to Manuela Gutman widow of Bustelo as far as the junction of the mentioned branch with the Rio Blanco Moderno, on the south by the Rio Blanco Moderno, which separates it from other lands of Mr. Pilar Ojea, who has succeeded in its ownership; and on the west by lands belonging to Mr. Cristino Lebrón and the Succession of Don Ramon Argueso, to a bamboo at the edge of the Rio Blanco to the junction of a ditch with the already mentioned Rio Viejo, and which property is worth seven thousand five hundred dollars ($7,500).

Another lot contiguous to the one aforementioned, known by the name of "Cerca de Ramirez," composed of three hundred and fifty (350) cuerdas and five hundred and thirty five one-thousandths, equivalent to one hundred and thirty seven hectares and seventy seven (77) ares of first class land in the most part, situated in the same barrio of Rio Abajo, bounded on the north by lands belonging to Mr. Juan Busó and others denominated "San Francisco" which did belong to Mr. Poncio Busó, on the east by lands of Don José Perez Villamil, now Don Prudencio Barriola, separated by a ditch, formerly belonging to Mr. Francisco Busó, by lands belong- to Mr. Juan Garzot and Mr. Ramon P. Villamil, formerly belonging to Don Francisco Buzó to near the mouth of the Rio Blanco, on the south by the Rio Blanco which separates it from the estates of Jose del Carmen Borges and those of Don Prudencio Bariola and the property known as "del lugar de los puentes" belonging to Mrs. Manuela

Gutman widow of Bustelo, and on the west by the Rio Blanco which separates it from the land called "de Madam Duran," belonging to the said Mrs. Manuela Gutman and from lands belonging to the Sucession de Don Ramon Argueso, formerly owned by Mr. Pedro Lebron and besides by part of the branch of the Rio Viejo which separates it from the "Islote" known as "Rivalta" belonging to Mrs. Manuela Gutman, which property is valued at fifteen thousand dollars ($15,000).

4 Another lot known as "de Madam Duran" composed of one hundred and seven cuerdas and four hundred and sixty eight one-thousandths, equivalent to forty two (42) hectares and 24 ares of land and woods situated in the said barrio of Rio Abajo in the jurisdiction of Naguabo, bounded on the North by the Rio Blanco which separates it from the "Cerca de Ramirez" belonging to Mrs. Manuela Gutman and by part of the lands owned by the "Sucession de Argueso," formerly owned by Mr. Pedro Lebron, on the west partly by the said Rio Blanco which separates it from the said "Cercado Ramirez," and partly by lands owned by Mr. Juan Buzó and on the west by lands owned by the "Sucesion Argueso," formerly by Don Pedro Lebron, valued at three thousand seven hundred and fifty dollars ($3,750).

Another rural property named "Los Puentes" situated in the same barrio of Rio Abajo in the jurisdiction of Naguabo composed of thirty six cuerdes (36) and two hundred and twenty three one thousandths equivalent to fourteen (14) hectares and twenty three (23) ares, of level land in the most part, which is traversed by a road, bounded on the north by lands owned by Mr. Juan Buzó and the Rio Blanco which separates it from the "Cercado Ramirez" belonging to Mrs. Manuela Gutman, on the east by the said Rio Blanco, dividing line between the Cercado Ramirez of Mrs. Manuela Gutman and lands owned by Mr. Francisco Buzó, on the south by lands of Mr. Francisco Buzó vertex with the river Antonio Ruiz and on the west by the lands of Mr. Juan Buzó which forms an angle with the river Antonio Ruiz, and which property is valued at one thousand five hundred dollars ($1,500).

Another rural property named "Cercado de Torres" and also known as "Maizales" containing two hundred and twenty three (223) cuerdas and one hundred and forty-one thousandths, equivalent to eighty seven hectares and seven hundred and twelve ares of first class land and highland situated in the barrio of Rio Abajo in the jurisdiction of Naguabo, bounded on the north by lands owned by Jesus L. Pereyó, formerly by Esteban Garriga, on the east

5 by lands of the said Pereyó owned by Garriga, on the south by the property known as Islote Quiñones from which it is separated by the river and besides by lands owned by the "Sucesion Rios y Berrios," the Rio Blanco intervening, and on the west by the Rio Blanco which separates it partly from lands owned by Mr. Arturo Gallardo and Mr. Ramon Villamil, formerly belonging to Eladio Saldaña, and valued at five hundred dollars ($500.00).

Another lot known as the "Cercado Maldonado," situated in the

same barrio of Rio Abajo, in the jurisdiction of Naguabo, composed of thirty eight (38) cuerdas and one hundred and ninety-one thousandths, equivalent to thirteen (13) hectares and eight hundred and thirty two (832) ares of low land, bounded on the north by lands owned by Mr. Jesús L. Pereyó, formerly belonging to Rodulfo Maldonado, on the east by a creek which separates it from lands owned by Jesús L. Pereyó, formerly belonging to Maldonado and by the Rio Viejo, which separates it from lands belonging to the "Sucesion de Ramon Argueso," formerly owned by Mr. Cecilio Rodriguez, on the south by the Rio Viejo, which separates it from the property known as the "Islote Quiñones" owned by Mrs. Manuela Gutman and on the west by a creek which separates it from the lands of the "Cercado de Torres" owned by the said Mrs. Manuela Gutman, valued at one thousand seven hundred and fifty dollars, and

Another rural property known as "Islote Quiñones," situated in the barrio Rio Abajo in the jurisdiction of Naguabo, composed of eighty eight (88) cuerdas and ninety five one thousandths, equivalent to thirty four (34) hectares and six hundred and twenty eight (628) ares of land (low) bounded on the north by the Rio Viejo which separates it from the "Cercado Maldonado" and the "Cercado de Torres" belonging to Mrs. Manuela Gutman, on the east by lands owned by the "Sucesion de Don Ramon Argueso," formerly by Don Cecilio Rodriguez and today by Mrs. Carmen Fuertes, on the south by the Rio Blanco de Naguabo, which separates it from lands owned by the "Sucesion de Don Jose Rios y Berrios," and on
6 the west by the said Rio Blanco, the Hacienda Mulas and "Cercado de Torres," valued at four thousand four hundred dollars (4,400).

That thereafter the said Manuela Gutman married one Miguel Bustelo and by him had five children to wit, Carolina Bustelo de Burset now married to the said Victor Burset, Miguel Bustelo, Manuel Bustelo, Isabel Bustelo now married to Ernesto Lopez Diaz and Sara Bustelo now married to Santiago B. Palmer.

That after the second marriage of the said Manuela Gutman as aforesaid said Jose Maria Rios, Jr., died under age, intestate, unmarried and without issue, and that by reason thereof whatever rights he had in the said estate left by his said father, the said Jose Maria Rios, descended to and vested in his mother the said Manuela Gutman de Bustelo subject, however, to the condition of defeasance after her death at the will of the complainant herein and the said Petronila Patricia Rios de Noyas sole remaining heirs of the said Jose Maria Rios deceased, and that after the death of the said Jose Maria Rios, the said Manuela Gutman instituted and conducted in the proper court to final termination proceedings as to declaration of heirship as to the property left by said Jose Rios

That the said Manuela Gutman died in the Island of Porto Rico on June the 27th, 1902, intestate.

That on or about the 6th day of Nov. 1901, she, the said Manuela Gutman, and the said Petronila Patricia Rios de Noyas and her husband contriving how to defeat the legal and equitable title of

complainant in and to one-third of said property inherited by complainant from her said father and in and to one-half of the property left by the said Jose Ma. Rios, Sr., at the time of his said death, as to which complainant had the right to recover after the death of her said mother, did procure a false and fraudulent declaration of title in her to the lands hereinbefore described and did procure and have the same inscribed in the Registry of Property of the District wherein said land is situated to wit, the District of Humacao, Porto Rico, and the said Manuela Gutman did thereafter to wit, on
7 or about the month of April, 1902, further contriving how to defeat the just title of complainant in and to half of said lands, make, execute and deliver to her said son-in-law, the said Victor Burset, a conveyance for a pretended consideration of forty-three thousand three hundred and thirty dollars ($43,330) to all of said tracts one half of which by right belongs to complainant and the other to Petronila Patricia Rios de Noyas by inheritance as aforesaid.

Complainant says that the said conveyance was obtained by the said Victor Burset and the other defendants herein by fraud and undue influence over the said Manuela Gutman de Bustelo who at the time of the execution of the said conveyance was old and infirm and subject to the influence of the said Victor Burset and said other defendants, and that no part of the said pretended consideration of forty-three thousand three hundred and thirty dollars ($43,330) was paid to the said Manuela Gutman de Bustelo and that the recitations in the said conveyance to the effect that the said forty-three thousand three hundred and thirty dollars ($43,330) had been so as aforesaid paid and delivered to the said Manuela Gutman de Bustelo are wholly untrue.

That the said conveyance was procured and made for the sole purpose of defeating the legal and equitable title of complainant herein to one-half of the land hereinbefore described.

That the said Victor Burset and said other defendants herein still contriving how to defeat the title of complainant to her said one-half of said property did procure the said Victor Burset to execute and deliver to one Guillermo Igaravides Landron a pretended mortgage to secure a pretended loan of thirty-one thousand dollars ($31,000) and did thereafter procure the inscription of the said mortgage in the office of the Registrar of Property for the said district of Humacao.

That still seeking to carry out their unlawful purpose to cheat, wrong and defraud this complainant said defendants did procure the said Victor Burset on or about the 6th day of July, 1902, to execute and deliver to said Santiago R. Palmer a conveyance in fee
8 to the said lands for a pretended consideration of forty three thousand three hundred and thirty dollars ($43,330) reciting in the said conveyance that the said Palmer, grantee in said pretended conveyance paid to said Victor Burset the sum of thirteen thousand three hundred and thirty dollars ($13,330) in cash and assumed the said mortgage for thirty thousand dollars ($30,000) pre-

tended to have been executed in favor of the said Guillermo Igaravides Landron, and did thereafter procure the inscription of the said conveyance to the said Palmer in the office of the said Registrar of Property for the district of Humacao, but complainant says that no part of said thirteen thousand three hundred and thirty dollars ($13,330) was paid by the said Palmer to the said Burset and that the said Palmer did not in fact assume any portion of said pretended mortgage aforesaid of thirty-one thousand dollars ($31,000) but that in truth and in fact at the time of the execution of the said pretended deed to him the said Santiago R. Palmer, Sr., well knew that said Victor Burset had no title to said land legal or equitable and that said mortgage was fraudulent and without valuable consideration and that said Victor Burset did not in fact owe any part of said thirty one thousand dollars ($31,000) to said Landron or to anyone else on account of said land, which said mortgage was thereafter cancelled by notarial enactment dated August 26th, 1902.

That thereafter, to wit, on the 26th day of Aug., 1902, the said Santiago R. Palmer, acting therein by and through his agent for that purpose, the said Victor Burset did execute and deliver to the said Juan R. Garzot and —— Fuerts, composing the said firm of Garzo and Fuertes aforesaid, a conveyance to three hundred and fifty (350) cuerdas of said land, being the said tract known as "Ramirez," for a pretended consideration of fifteen thousand seven hundred and fifty dollars ($15,750) reciting in said conveyance that said Garzot and Fuertes had paid in cash for said land the sum of nine thousand two hundred and fifteen dollars ($9,215) and that there remained a deferred payment secured by a lien on
9 said land of six thousand five hundred and thirty five dollars ($6,535.00.) Complainant says that in truth and in fact no money or consideration whatever was paid by said Garzo and Fuertes for said land but that said conveyance to them was made in furtherance of the said fraudulent attempt on the part of the said defendants to defeat the title of this complainant and to appropriate the said land to their own use and benefit.

That thereafter to wit, on or about the 18th day of October, 1902, the said Santiago R. Palmer acting by and through his agent for that purpose the said Victor Burset, did execute a pretended assignment of the balance due on said purchase money by the said Garzo and Fuertes to the said Manuel Padin y Otero and said Cerecedo Hermanos represented by Enrique Cerecedo y Millán. Complainant says that no consideration passed from the said Manuel Padin y Otero and said Cerecedo Hermanos to the said Palmer for said assignment but that the same was made in furtherance of said unlawful purpose to defeat the title of complainant to said lands.

That thereafter to wit, on the 11th day of May, 1903, the said Santiago R. Palmer acting by and through his said agent the said Victor Burset did execute to said Garzot and Fuertes assignees of said Padin and Cerecedo a release of said mortgage to the extent of the balance due thereon and that thereafter the said mortgage was by notarial instrument cancelled and released in full and the said can-

cellation was duly inscribed in the office of the Registrar of Property of the said district of Humacao.

That by reason of the foregoing the said Gonzalez and Fuertes are pretending to claim the land so as aforesaid pretended to have been conveyed to them by the said Santiago R. Palmer, but that they, the said Gonzalez and Fuertes, well knew and were advised at the time they pretended to have bought said land that the said Santiago R. Palmer had no title thereto and no right to convey the same to them or anyone else.

That thereafter to wit, on or about the 21st day of Nov.,
10 1902, the said Santiago R. Palmer still acting by and through his said agent the said Victor Burset and still contriving how to cheat, wrong, and defraud this complainant of a just title to one-half of said lands did make, execute and deliver to said Petronila Rios de Noyas wife of the said Francisco Noyas defendants herein a conveyance in fee to one hundred (100) cuerdas of land part of the said land so as aforesaid belonging to this complainant and the said Petronila Rios de Noyas as heirs of their father Jose Maria Rios for the pretended consideration of four thousand dollars ($4,000) and that the said Petronila Patricia Rios de Noyas and Francisco Noyas did thereafter procure the said conveyance to be inscribed in the office of the said Registrar of Property. Complainant says that in truth and in fact no part of said consideration was paid to the said Santiago R. Palmer by the said Petronila Patricia Rios de Noyas or said Francisco Noyas or anyone else for them and that the said parties well knew at the time of the execution and delivery of the said conveyance that the said Santiago R. Palmer had no right or title to said land and no right to execute said conveyance and that the said Petronila Patricia Rios de Noyas and her said husband Francisco Noyas are conspiring with the said other defendants herein for the purpose of defeating the title of this complainant to her share of said property as aforesaid and that the said conveyance to said one hundred (100) cuerdas of land was executed in accordance with the said fraudulent agreement between said defendants and for the purpose of obtaining the consent of the said Petronila Patricia Rios de Noyas and her husband thereto.

Complainant further says that each and all of said defendants are insolvent and the amount of property undisposed of by said Manuela Gutman prior to her death does not amount to or exceed in value the property left by said Jose Maria Rios, Sr., at the time of his death.

Complainant further says that each and all of said conveyances, mortgages, releases and inscriptions are in fraud of complainants' rights and unless the same are set aside her just and legal title
11 thereto will be defeated. She further says that each and everyone of said instruments are inscribed in the Registry of Property of Humacao aforesaid and that the protections of complainant's rights requires that this Court should issue an order to the Registrar of said District commanding him to make a note on his said registry books of the pending of this action.

To the end therefore, that your orator may have that relief which he can only obtain in a Court of equity, and that the said defendant

may answer the premises, but not under oath or affirmation, the benefit whereof is expressly waived by your orator, he now prays the Court:

That said defendants may be required to produce said alleged writings and that they may be adjudged to be false and fraudulent and ordered to be delivered up to be cancelled and annulled according to the practice of Courts of Equity in like case; and that the Court issue said order to said Registrar of the Humacao District commanding him to make on his books as such at the proper place thereon the pendency of this suit.

And may it please your Honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said defendants as hereinbefore set out commanding them and each of them on a certain day and under a certain penalty in the said writ to be inscribed, personally to be and appear before your Honor in this Honorable Court, and then and there full, true and perfect answer make to all and singular the premises and further to stand, to perform and abide such further orders, directions and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

(Signed) MARIA RIOS DE RUBIO, *Complainant,*
By DEXTER & HORD, AND
JUAN F. VIAS OCHOTECO,
Her Solicitors.

12 *Demurrer of Defendants Garzot & Fuertes.*

(Filed Aug. 3, 1903.)

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The joint and several demurrers of the above-named defendants, Juan R. Garzot and —— Fuertes, to the bill of complaint of the above-named plaintiff.

This defendants, by protestation, not confessing or acknowledging all or any of the matters or things in the said bill of complaint contained to be true in such manner and form as the same are herein set forth and alleged, doth demur to the said bill. And for causes of demurrer showeth.

I. That it appeareth from said bill of complainant that this Court has no jurisdiction to hear and determine this action, because the said bill does not show on its face any diversity of citizenship between the parties complainant and defendant.

II. That it appeareth by the said bill that the plaintiff is not entitled to the relief prayed by the bill against this defendant or

any of them, because the matters alleged by the said plaintiff are *res adjudicata*, upon which a final sentence has been rendered by the Supreme Court of this Island.

III. That enough appears upon the face of the bill to show that the plaintiff have an adequate remedy at law..

IV. That said bill of complaint of plaintiff is wholly without Equity.

Wherefore and for divers other good causes of demurrer appearing on said bill, this defendants demurs thereto, and he prays the judgment of this Honorable Court, whether he shall be compelled to make further or any answer to the said bill; and he humbly
13 prays to be hence dismissed with his reasonable costs sustained in his behalf.

(Signed) JUAN HERNANDEZ LOPEZ.

I hereby certified that the foregoing demurrer is in my opinion well founded in point of law.

JUAN HERNANDEZ LOPEZ,
Counsel for Defendants.

San Juan de Puerto Rico, August 3, 1903.

UNITED STATES OF AMERICA, *District of Porto Rico:*

Juan R. Garzot, in his own behalf and in representation of the firm of Garzot and Fuertes, being duly sworn, deposes and says: he is the above-named defendants. The foregoing demurrer is not interposed for delay.

GARZOT Y FUERTES.

Sworn to before me this 3d day of August 1903.

(Signed) GABRIEL GUERRA,
[SEAL OF NOTARY.] *Notary Public.*

14 *Motion to Amend Bill of Complaint.*

(Filed Oct. 6, 1906.)

Equity. No. 196.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Now comes the complainant herein by her solicitors, Dexter & Hord, and moves the Court to grant her leave to amend her bill of complaint in the following parts:

After the last paragraph on page 5 of the bill as filed, ending with the words "four thousand, four hundred dollars," and before the first paragraph beginning on page 6 of the said bill, beginning with

the words "that thereafter the said Manuela Gutman married one Miguel Bustelo," the following words:

"that your oratrix was at all the times hereinafter mentioned the owner of a one-half interest in and to all of said lands aforesaid, having acquired a one-third interest therein from her said father, Don José Maria Rios, by the terms of a will executed in his name by his widow Doña Manuela Gutman, under power conferred upon her by her husband, the said Don José Maria Rios; and also one-half of the one-third interest of her brother, José Maria Rios (second), deceased."

For further amendment complainant prays leave of the Court to strike out all that part of said bill at the bottom of page 6, beginning with the words "that on, or about, the 16th day of November, 1901, she, the said Manuela Gutman, and the said Petronila Patricia Rios de Noyas," and ending with all of that part of page 7, beginning at the top thereof and ending with the words "and the other to Petronila Patricia Rios de Noyas by inheritance, as aforesaid," and in place of the same to substitute the following:

"That on or about the 16th day of November, 1901, she, the said Manuela Gutman and the said Petronila Patricia Rios de Noyas, and the husband of the latter unlawfully and fraudulently conspiring and contriving to defeat the legal and equitable title of complainant in and to one-half of the property hereinbefore described, acquired as aforesaid, by misrepresentation and deceit, induced your oratriz to enter into a private contract with the said Manuela Gutman and the said Petronila Patricia Rios de Noyas, by which your oratrix in consideration that the said Manuela Gutman and the said Petronila Patricia Rios de Noyas would set apart and concede to your oratrix the free and absolute enjoyment of certain property in said contract described, your oratrix would then convey to the said Manuela Gutman her interest in the properties hereinbefore described by the terms of said private contract, which was agreed to be made the subject of a public notarial document within forty-eight hours from the date of its execution.

"Your oratrix avers that she is not able to state the exact date of the said private agreement for the reason that the said Manuela Gutman and the said Petronila Patricia Rios de Noyas have continuously refused to give her a copy thereof, and failed and refused to carry out the terms thereof in that they failed and refused to execute the public notarial documents required by its terms from the beginning, and ever since have failed and refused to set apart, transfer and convey to your oratrix the property which they obligated themselves to so convey and transfer to her in consideration of executing the said private agreement," the same being the estate "San José de las Mulas" and others.

"And your oratrix states that, in pursuance to the said fraudulent design to deprive your oratrix of her just rights in and to the one-half interest in the said properties, the said Manuela Gutman and the said Petronila Patricia Rios de Noyas on or about the month of November, 1901, caused certain proceedings to be instituted in the

District Court of Humacao, Porto Rico, for the purpose of having the interest and title of your oratrix in and to said properties transferred to and established in the said Manuela Gutman. The said proceedings so instituted were known as *Expediente de dominio* or as summary and *ex parte* proceedings to establish the title as aforesaid in and to the said Manuela Gutman. Thereupon one José Maria Cuadra, an attorney-at-law, acting without authority from your oratrix, and co-operating with the said Manuela Gutman to deprive your oratrix, without authority of law, of the interest and title which she then had and now has in and to said property, took some part in the said proceedings, but without the knowledge or authority of your oratrix. And thereupon the District Court of Humacao, on or about the — day of November, 1901, without authority at law and by a null and void decree of judgment of said court, attempted to be based upon the said private agreement and without any other or further lawful reason, did declare and adjudicate the title of your oratrix in and to the said property in and to the said Manuela Gutman and declared her the sole and absolute owner of all and several the said properties described herein, although the title of a one-half interest therein was in your oratrix.

"And your oratrix avers that all the said proceedings and the decree of judgment of the said court of Humacao therein were and are null, irregular and void and of no force or effect. And thereafter the said illegal decree or judgment of said court of Humacao was inscribed in the Register of Property in the District of Humacao, Porto Rico.

"Your oratrix further states that having the title of said property illegally and unlawfully inscribed in her favor as aforesaid, the said Manuela Gutman fraudulently and wrongfully, and for the purpose of defeating the just title of complainant in and to one-half of the said properties, did, on or about the 30th day of April, 1902, before Notary Herminio Diaz, of San Juan, fraudulently and without right, execute and deliver to her said son-in-law, the said Victor
Burset, a conveyance for the pretended consideration of
16 forty three thousand, three hundred and thirty dollars, and
to all of the said properties hereinbefore described, one-half of which by right, belongs to your oratrix as aforesaid.

"Your oratrix states that the said Victor Burset at the time well knew that your oratrix was the owner of one-half interest in said lands, and that the said Manuela Gutman had no interest or title therein, and was well aware of the fraudulent, void, and illegal proceedings carried on, as aforesaid, in the District Court of Humacao.

For a further amendment to the said bill, complainant would add at the bottom of page 7 of said bill of complaint, ending with the words "registrar of property for the said District of Humacao," the following words:

"The said Guillermo Landrón at the time well knew that Victor Burset had no title to the said property, but that half thereof belonged to your oratrix; and he, the said Landrón, well knew of the fraudulent and void proceedings, conducted as aforesaid in the

District Court of Humacao, and of the void and fraudulent deed from the said Manuela Gutman to the said Victor Burset.

"The said mortgage was dated July 1, 1902."

Complainant further amends by inserting on page 8 of the said bill, on the third line thereof, after the words "sixth of July, 1902," the following words:

"Before the Notary, Herminio Diaz, San Juan, Porto Rico."

Complainant further amends by adding to the paragraph on page 9, ending about the middle of the page with the words "and to appropriate said lands to their own use and benefit," the following words:

"and defendants Garzot and Fuertes at the time well knew of the fraudulent purposes of the said Manuela Gutman and Victor Burset and Santiago Palmer to defraud your oratrix, and of the void and fraudulent character of the said proceedings in the District Court of Humacao, and of the fraudulent and void conveyance by the said Manuela Gutman to Victor Burset and to the said Santiago Palmer."

Complainant further amends, on page 10 of said bill, in the fourth and seventh lines of said page, by substituting wherever the word Gonzalez appears the name "Garzot."

Complainant further amends on page 11 of the said bill by adding after the words "Petronila Patricia Rios de Noyas and her husband thereto" the following words:

"Your oratrix states that the value of her one-half interest in the said lands aforesaid described amounts to fifty thousand (50,000) dollars."

Complainant further amends on page 12 of the said bill by
17 substituting in place of the word "thereto," being the first word on the eighth line of said page, the following words:

" to one-half of the foregoing properties."

Complainant further amends by inserting after the words "writings," on the 20th line of the 12th page, the following words:

" consisting of the said private agreement of 1901, the decree of the District Court of Humacao in the *expeniente de dominio,* deed of conveyance from Manuela Gutman to Victor Burset, deed from Victor Burset to Santiago Palmer, and deed of conveyance from Santiago Palmer to the said Garzot and Fuertes."

Complainant further amends by adding after the words "pendency of this suit" on the 25th line of page 12 of said bill the following words:

" and that all of the said deeds and mortgages, as well as the said contract and the said decree of the District Court of Humacao in the *expediente de dominio* be decreed to be null and void and of no force and effect, and that the title of your oratrix in and to one-half of the properties hereinbefore described shall be by decree of this court declared and established free and clear from all the said contracts, deeds, mortgages, decrees and proceedings herein above specifically set forth, and that thereupon the Registrar of Property shall enter upon his record at the appropriate places in accordance with law such entries as may be necessary and proper, showing the exist-

ence of such decree of this court, and of the annulment and cancellation of all the entries and records of said false, fraudulent, and illegal conveyances, decrees and proceedings."

(Signed) DEXTER & HORD,
Solicitors for Plaintiff.

18 *Order Overruling Demurrers, Allowing Amendment, and Requiring Bill as Amended to be Re-drawn.*

(Filed Oct. 9, 1903.)

MARIA RIOS DE RUBIO, Plaintiff,
vs.
VICTOR BURSET ET AL., Defendants.

Order.

The several demurrers of Victor Burset, S. R. Palmer, Garzot y Fuertes, Enrique Cericedo, Manuel Padin and Petronila Patricia Rios de Noya heretofore filed in this office and now noted of record this day coming on to be heard, the parties appearing by their attorneys, and being now considered the demurrer of Petronila Patricia Rios de Noya is overruled, to which she excepts; and the demurrer of Enrique Cericedo and Manuel Padin coming on to be heard, the plaintiff by her attorneys dismisses said parties and they are adjudged their costs expended herein. The demurrers of Gazot y Fuertes and Victor Burset and S. R. Palmer and Juan Garzot coming on to be heard, the plaintiff by her attorneys dismisses the bill as to Juan Garzot individuallly and now tenders and moves to file an amended bill herein and both the demurrers and the motion to file the amended bill being considered, the amended bill is allowed to be filed and said demurrers are overruled, but the plaintiff is ordered within five days to file a bill herein conforming to the original bill as amended, and the defendants have until November 14th to plead herein.

(Signed) WM. H. HOLT, *Judge.*

19 *Amended Bill of Complaint.*

(Filed Oct. 14, 1903.)

Equity. No. 196.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Now comes the Complainant herein, Maria Rios de Rubio, by her solicitors Dexter & Hord, and in compliance with the order of Court heretofore made to rewrite her Bill of Complaint herein, as amended and says:

María Ríos de Rubio, a widow, resident of San Juan, Porto Rico and a loyal subject of the King of Spain, brings this her bill against Petronila Patricia Ríos de Noya, a resident and citizen of Porto Rico and her husband, Francisco Noya, a resident of Humacao, Porto Rico and a citizen of said Island of Porto Rico; Victor Burset, a citizen of Porto Rico and resident of the city of San Juan in said Island; Santiago R. Palmer a citizen of Porto Rico of the said city of San Juan of said Island; Juan R. Garzot and Faustino Fuertes, composing the firm of Garzot and Fuertes, residents of Naguabo and subjects of the King of Spain; and says

First. Heretofore to wit, In the year 1875 José María Ríos, Sr., the father of complainant herein, died in Porto Rico, leaving a surviving widow, to wit, Manuela Gutman and three children, to wit, complainant herein and the said Petronila Ríos de Noya and one José María Ríos, Jr., that at the time of his death said José María Ríos, Sr., was the owner and in possession of a large amount of property, among which was the real estate hereinafter described and set out; that said José María Ríos, Sr., left no will but did leave a power to his said wife the said Manuela Gutman to execute a will in his name and that the said Manuela Gutman did thereafter and after the death of the said José María Ríos, Sr., execute the power so as aforesaid conferred on her by her said husband and did declare and constitute as heirs of the said José María Ríos, Sr., complainant herein and the said Petronila Patricia Ríos de Noya and the said José Ma. Ríos, Jr., each of whom was at that time a minor, and did in the proper Court institute the necessary legal proceedings on said estate, but which said proceedings reached only a preliminary stage and were still pending at the time of the death of the said Manuela Gutman;

That the said property was separate property of the said José María Ríos, Sr., theretofore derived by inheritance from his father and mother, and by purchases from his sisters with his separate funds, and is described as follows:

A rural estate known by the name of "Islote" or "Islote Rivalta" composed of one hundred and fifty (150) cuerdas of first class land, equivalent to fifty-eight (58) hectares, ninety-six (96) ares situated in the barrio Río Abajo in the jurisdiction of Naguabo, bounded on the north by a branch of the Río Abajo known as Río Viejo, which separates it from the lands of Mr. Juan Busó, now Mr. Juan Garzot, on the east by the same Río Viejo, which separates it from a lot known as the Ramirez lot belonging to Mrs. Manuela Gutman widow of Bastelo as far as the junction of the mentioned branch with the Río Blanco Moderno, on the south by the Río Blanco Moderno, which separates it from other lands of Mr. Pilar Ojoa, who has succeeded in its ownership; and on the west by lands belonging to Mr. Cristino Lebrón and the Succession of Don Ramon Argueso, from a bamboo at the edge of the Río Blanco to the junction of a ditch with the already mentioned Río Viejo and which property is worth seven thousand five hundred dollars ($7,500.)

Another lot contiguous to the one aforementioned, known by the name of "Cerca de Ramírez," composed of three hundred and fifty

(350) cuerdas and five hundred and thirty five one thou-
21 sandths, equivalent to one hundred and thirty seven hectares and seventy seven (77) ares of first class land in the most part, situated in the same barrio of Río Abajo, bounded on the north by lands belonging to Mr. Juan Busó and others denominated "San Francisco" which did belong to Mr. Poncio Busó, on the east by lands of Don José Perez Villamil, now Don Prudencio Barriola, separated by a ditch, formerly belonging to Mr. Francisco Buzó, by lands belonging to Mr. Juan Garzot and Mr. Ramon P. Villamil, formerly belonging to Don Francisco Buzó to near the mouth of the Río Blanco on the south by the Río Blanco which separates it from the estates of José del Carmen Borges and those of Don Prudencio Barriola and the property known as "del lugar de los puentes" belonging to Mrs. Manuela Gutman widow of Bustelo, and on the west by the Río Blanco which separates it from the land called "de Madam Duran," belonging to the said Mrs. Manuela Gutman and from lands belonging to the Sucesión de Don Ramon Argueso, formerly owned by Mr. Pedro Lebrón and besides by part of the branch of the Río Viejo which separates it from the "Islote" known as "Rivalta" belonging to Mrs. Manuela Gutman which property is valued at fifteen thousand dollars ($15,000.)

Another lot known as "de Madam Duran" composed of one hundred and seven cuerdas and four hundred and sixty eight one thousandths, equivalent to forty two (42) hectares and 24 ares of land and woods situated in the said barrio of Río Abajo in the jurisdiction of Naguabo, bounded on the North by the Río Blanco which separates it from the "Cerca de Ramírez" belonging to Mrs. Manuela Gutman and by part of the lands owned by Mr. Pedro Lebrón, on the west partly by the said Río Blanco which separates it from the said "Cercada Ramírez" and partly by lands owned by Mr. Juan Buzó and on the west by lands owned by the "Sucesion Argueso," formerly by Don Pedro Pebron, valued at three thousand seven hundred and fifty dollars ($3,750.)

22 Another rural property named "Los Puentes" situated in the same barrio of Río Abajo in the jurisdiction of Naguabo composed of thirty six cuerdas (36) and two hundred and twenty three one thousandths equivalent to fourteen (14) hectares and twenty three (23) ares, of level land in the most part, which is traversed by a road, bounded on the north by lands owned by Mr. Juan Buzó and the Río Blanco which separates it from the "Cercada Ramírez" belonging to Mrs. Manuela Gutman, on the east by the said Río Blanco, dividing line between the "Cercada Ramírez" of Mrs. Manuela Gutman and lands owned by Mr. Francisco Buzó, on the south by lands of Mr. Francisco Buzó vertex with the river Antonio Ruíz and on the west by the lands od Mr. Juan Buzó which forms an angle with the river Antonio Ruíz, and which property is valued at one thousand five hundred dollars ($1,500.).

Another rural property named "Cercado de Torres" and also known as "Maizales" containing two hundred and twenty three (223) cuerdas and one hundred and forty one thousandths equivalent to eighty seven hectares and seven hundred and twelve ares

of first class land and highland situated in the barrio of Río Abajo in the jurisdiction of Naguabo, bounded on the north by lands owned by Jesús L. Pereyó, formerly by Esteban Garriga, on the east by lands of the said Pereyó owned by Garriga, on the south by the property known as Islote Quiñones from which it is separated by the river and besides by lands owned by the "Sucesión Ríos y Berrios," the Rio Blanco intervening, and on the west by the Rio Blanco which separates it partly from lands owned by Mr. Arturo Gallordo and Mr. Ramon Villamil, formerly belonging to Eladio Saldaña, and valued at five hundred dollars ($500.00).

Another lot known as the "Cercado Maldonado," situated in the same barrio of Río Abajo, in the jurisdiction of Naguabo, composed of thirty eight (38) cuerdas and one hundred and ninety one thousandths, equivalent to thirteen (13) hectares and eight hundred and thirty two (832) ares of low land, bounded on the north by lands owned by Mr. Jesús L. Pereyó, formerly belonging to Rodulfo Maldonado, on the east by a creek which separates it from lands owned by Jesús L. Pereyó, formerly belonging to Maldonado and by the Río Viejo, which separates it from the lands belonging to the "Sucesión de Ramón Argueso," formerly owned by Mr. Cecilio Rodriguez, on the south by the Río Viejo, which separates it from the property known as "Islote Quiñones," owned by Mrs. Manuela Gutman and on the west by a creek which separates it from the lands of the "Cercado de Torres" owned by the said Mrs. Manuela Gutman, valued at one thousand seven hundred and fifty dollars, and

23

Another rural property known as "Islote Quiñones," situated in the barrio Río Abajo in the jurisdiction of Naguabo composed of eighty eight (88) cuerdas and ninety five one thousandths, equivalent to thirty four (34) hectares and six hundred and twenty eight (628) ares of land (low) bounded on the north by the Rio Viejo which separates it from the "Cercado Maldonado" and the "Cercado de Torres" belonging to Mrs. Manuela Gutman, on the east by lands owned by the "Sucesión de Don Ramón Argueso" formerly by Don Cecilio Rodriguez and to-day by Mrs. Carmen Fuertes, on the south by the Rio Blanco which separates it from lands owned by the "Sucesión de Don José Rios y Berrios," and on the west by the said Rio Blanco, the Hacienda Mulas and "Cercado de Torres," valued at four thousand four hundred dollars ($4,400.).

"That your oratrix was at all the times hereinafter mentioned the owner of a one-half interest in and to all of said lands aforesaid, having acquired a one-third interest therein from her said father, Don José María Rios, by the terms of a will executed in his name by his widow, Doña Manuela Gutman, on the power conferred upon her by her husband, the said Don José María Ríos; and also one-half of the one-third interest of her brother José María Ríos (second) deceased."

That thereafter the said Manuela Gutman married one Miguel Bustelo and by him had five children to wit, Carolina Bustelo de Burset now married to the said Victor Burset, Miguel Bustelo, Man-

uel Bustelo, Isabel Bustelo now married to Ernesto López
24 Díaz and Sara Bustelo now married to Santiago B. Palmer.

That after the second marriage of the said Manuela Gutman as aforesaid said José María Rios, Jr., died under age, intestate, unmarried and without issue, and that by reason thereof whatever rights he had in the said estate left by his said father, the said José María Ríos, descended to and vested in his mother the said Manuela Gutman de Bustelo subject, however, to the condition of the feasance after her death leaving the complainant herein and the said Petronila Patricia Rios de Noya sole remaining heirs of the said José María Ríos, deceased, and that after the death of the said José María Ríos, the said Manuela Gutman instituted and conducted in the proper court to final termination proceedings as to declaration of heirship as to the property left by said José Ríos.

"That on or abort the 16th day of November, 1901, she, the said Manuela Gutman and the said Petronila Patricia Ríos de Noya, and the husband of the latter unlawfully and fraudulently conspiring and contriving to defeat the legal and equitable title of complainant in and to one-half of the property hereinbefore described,—acquired as aforesaid,—by misrepresentation and deceit, induced your oratrix to enter into a private contract with the said Manuela Gutman and the said Petronila Patricia Rios de Noya, by which your oratrix in consideration that the said Manuela Gutman and the said Petronila Patricia Ríos de Noya would set apart and concede to your oratrix the free and absolute enjoyment of certain property in said contract described, your oratrix would then convey to the said Manuela Gutman her interest in the properties hereinbefore described by the terms of said private contract, which was agreed to be made the subject of a public notarial document within forty eight hours from the date of its execution.

Your oratrix avers that she is not able to state the exact date of the said private agreement for the reason that the said Manuela Gutman and the said Petronila Patricia Rios de Noya have continuously refused to give her a copy thereof, and failed and refused to carry out the terms thereof in that they failed and refused to execute the public notarial document required by its terms from the beginning, and ever since have failed and refused to set apart, transfer and convey to your oratrix the property which they obligated themselves to so convey and transfer to her in consideration of executing the said private agreement, the same being the estate "San José de las Mulas" and others.

"And your oratrix states that, in pursuance to the said fraudulent design to deprive your oratrix of her just rights in and to the one-half interest in the said properties, the said Manuela Gutman and the said Petronila Patricia Rios de Noya on or about the
25 month of November, 1901, caused certain proceedings to be instituted in the District Court of Humacao, Porto Rico, for the purpose of having the interest and title of your oratrix and to said properties transferred to and established in the said Manuela Gutman. The said proceedings so instituted were known as *expendiente de dominio* or as summary and *ex parte* proceedings to

establish the title as aforesaid in and to the said Manuela Gutman. Thereupon one José María Cuadra, an attorney-at-law, acting without authority from your oratrix, and co-operating with the said Manuela Gutman to deprive your oratrix, without authority of law, of the interest and title which she then had and now has in and to said property, took some part in the said proceedings, but without the knowledge or authority of your oratrix. And thereupon the District Court of Humacao, on or about the — day of November, 1901, without authority at law and by a null and void decree or judgment of said court attempted to be based upon the said private agreement and without any other or further lawful reason, did declare and adjudicate the title of your oratrix in and to the said property in and to the said Manuela Gutman and declared her the sole and absolute owner of all and several the said properties described herein, although the title of a one-half interest therein was in your oratrix.

"And your oratrix avers that all the said proceedings and the decree or judgment of the said court of Humacao therein were and are null, irregular and void and of no force or effect. And thereafter the said illegal decree or judgment of said court of Humacao was inscribed in the Register of Property in the District of Humacao, Porto Rico.

"Your oratrix further states that having the title of said property illegally and unlawfully inscribed in her favor as aforesaid, the said Manuela Gutman fraudulently and wrongfully, and for the purpose of defeating the just title of complainant in and to one-half of the said properties did, on or about the 30th day of April, 1902, before Notary Herminio Diaz, of San Juan, fraudulently and without right, execute and deliver to her said son-in-law, the said Victor Burset, a conveyance for the pretended consideration of forty three thousand, three hundred and thirty dollars, and to all of the said properties hereinbefore described, one half of which by right, belongs to your oratrix, as aforesaid.

"Your oratrix states that the said Victor Burset at the time well knew that your oratrix was the owner of one-half interest in said lands, and that the said Manuela Gutman had no interest or title therein, and was well aware of the fraudulent, void and illegal proceedings carried on, as aforesaid, in the District Court of Humacao.

"Complainant says that said conveyance was obtained by the said Victor Burset and the other defendants herein by fraud and undue influence over the said Manuela Gutman de Bustelo who at the time of the execution of the said conveyance was old and infirm and subject to the influence of the said Victor Burset and said other defendants, and that no part of the said pretended consider-
26 ation of forty three thousand three hundred and thirty dollars ($43,330) was paid to the said Manuela Gutman de Bustelo and that the recitations in the said conveyance to the effect that the said forty-three thousand three hundred and thirty dollars ($43,330) had been so as aforesaid paid and delivered to the said Manuela Gutman de Bustelo are wholly untrue.

That the said conveyance was procured and made for the sole purpose of defeating the legal and equitable title of complain-t herein to one-half of the land hereinbefore described.

That the said Victor Burset and said other defendants herein still contriving how to defeat the title of complainant to her said one-half of said property — the said Victor Burset to execute and deliver to one Guillermo Igaravidez Landron a pretended mortgage to secure a pretended loan of thirty one thousand — ($31,000.) and did thereafter procure the inscription of the said mortgage in the office of the Registrar of Property for the said district of Humacao.

"The said Guillermo Landrón at the time well knew that Victor Burset had no title to the said property, but that half thereof belonged to your oratrix; and he, the said Landrón, well knew of the fraudulent and void proceedings, conducted as aforesaid, in the District Court of Humacao, and of the void and fraudulent deed from the said Manuela Gutman to the said Victor Burset.

"The said mortgage was dated July 1, 1902."

That still seeking to carry out their unlawful purpose to cheat, wrong and defraud this complainant said defendants did procure the said Victor Burset on or about the 6th day of July, 1902, before the Notary, Herminio Diaz, San Juan, Porto Rico, to execute and deliver to said Santiago R. Palmer a conveyance in fee to the said lands for a pretended consideration of forty three thousand three hundred and thirty dollars ($43,330) reciting in the said conveyance that the said Palmer, grantee in said pretended conveyance, paid to said Victor Burset the sum of thirteen thousand three hundred and thirty dollars ($13,330) in cash and assumed the said mortgage for thirty thousand dollars ($30,000) pretended to
27 have been executed in favor of the said Guillermo Igaravidez Landron, and did thereafter procure the inscription of the said conveyance to the said Palmer in the office of the said Registrar of Property for the district of Humacao, but complainant says that no part of said thirteen thousand, three hundred and thirty dollars ($13,330) was paid by the said Palmer to the said Burset and that the said Palmer did not in fact assume any portion of said pretended mortgage aforesaid of thirty one thousand dollars $31,-000) but that in truth and in fact at the time of the execution of the said pretended deed to him the said Santiago R. Palmer, Sr., well knew that said Victor Burset had no title to said land legal or equitable and that said mortgage was fraudulent and without valuable consideration and that said Victor Burset did not in fact owe any part of said thirty one thousand dollars ($31,000) to said Landron or to any one else on account of said land, which said mortgage was thereafter cancelled by notarial enactment dated August 26th, 1902.

"That thereafter, to wit, on the 26th day of August, 1902, the said Santiago R. Palmer, acting therein by and through his agent for that purpose, the said Victor Burset did execute and deliver to the said Juan R. Garzot and Faustino Fuertes, composing the said firm of Garzot and Fuertes aforesaid, a conveyance to three hundred and fifty (350) cuerdas of said land, being the said tract known as "Ramírez" for a pretended consideration of fifteen thousand seven hundred and fifty dollars ($15,750) reciting in said conveyance that said Garzot and Fuertes had paid in cash for said land the sum of nine thousand two hundred and fifteen dollars ($9,215) and that

there remained a deferred payment secured by a lien on said land of six thousand five hundred and thirty five dollars ($6,535.00). Complainant says that in truth and in fact no money or consideration whatever was paid by said Garzot and Fuertes for said land but that said conveyance to them was made in furtherance of
28 the said fraudulent attempt on the part of the said defendants to defeat the title of this complainant and to appropriate the said land to their own use and benefit, and defendants Garzot & Fuertes at the time well knew of the fraudulent purposes of the said Manuela Gutman and Victor Burset and Santiago Palmer to defraud your oratrix, and of the void and fraudulent character of the said proceedings in the District Court of Humacao, and of the fraudulent and void conveyance by the said Manuela Gutman to Victor Burset and to the said Santiago Palmer.

"That thereafter to wit, on or about the 18th day of October, 1902, the said Santiago R. Palmer acting by and through his agent for that purpose the said Victor Burset, did execute a pretended assignment of the balance due on said purchase money by the said Garzot and Fuertes to the said Manuel Padin y Otero and said Cerecedo Hermanos represented by Enrique Cerecedo San Millán. Complainant says that no consideration passed from the said Manuel Padín y Otero and said Cerecedo Hermanos to the said Palmer for said assignment but that the same was made in furtherance of said unlawful purpose to defeat the title of complainant to said lands.

That thereafter to wit, on the 11th day of May, 1903, the said Santiago R. Palmer acting by and through his said agent the said Victor Burset did execute to said Garzot and Fuertes assignees of said Padín and Cerecedo a release of said mortgage to the extent of the balance due thereon and that thereafter the said mortgage was by notarial instrument cancelled and released in full and the said cancellation was duly inscribed in the office of the Registrar of Property of the said district of Humacao.

That by reason of the foregoing the said Garzot and Fuertes are pretending to claim the land so as aforesaid pretended to have been conveyed to them by the said Santiago R. Palmer, but that they, the said Garzot and Fuertes, well knew and were advised at the time they pretended to have bought said land that the said Santiago R. Palmer had no title thereto and had no right to convey the same to them or anyone else.

29 "That thereafter to wit, on or about the 21st day of November, 1902, the said Santiago R. Palmer still acting by and through his said agent the said Victor Burset and still contriving how to cheat, wrong and defraud this complainant of a just title to one-half of said lands did make, execute and deliver to said Petronila Rios de Noya wife of the said Francisco Noya defendants herein a conveyance in fee to one hundred (100) cuerdas of land part of the said land so as aforesaid belonging to this complainant and the said Petronila Rios de Noya as heirs of their father José María Rios for the pretended consideration of four thousand dollars ($4,000) and that the said Petronila Patricia Rios de Noya and Francisco Noya did thereafter procure the said conveyance to be

inscribed in the office of the said Registrar of Property. Complainant says that in truth and in fact no part of said consideration was paid to the said Santiago R. Palmer by the said Petronila Rios de Noya or said Francisco Noya or anyone else for them and that the said parties well knew at the time of the execution and delivery of the said conveyance that the said Santiago R. Palmer had no right or title to said land and had no right to execute said conveyance and that the said Petronila Patricia Rios de Noya and her husband Francisco Noya are conspiring with the said other defendants herein for the purpose of defeating the title of this complainant to her share of said property as aforesaid and that the said conveyance to said one hundred (100) cuerdas of land was executed in accordance with the said fraudulent agreement between said defendants and for the purpose of obtaining the consent of the said Peronila Patricia Rios de Noya and her husband thereto. Your oratrix states that the value of her one-half interest in the said lands aforesaid described amounts to fifty thousand (50,000) dollars.

Complainant further says that each and all of said defendants are insolvent and the amount of property undisposed of by said Manuela Gutman prior to her death does not amount to or exceed in value the property left by said José María Rios, Sr., at the time of his death.

Complainant further says each and all of said conveyances, mortgages, releases and inscriptions are in fraud of complainant's rights and unless the same are set aside her just and legal title to one-half of the foregoing properties will be defeated. She further says each and every one of said instruments are inscribed in the Registry of Property of Humacao aforesaid and that the protection of complainant's rights requires that this Court should issue an order to the Registrar of said District commanding him to make a note on his said registry books of the pending of this action.

To the end thereof, that your orator may have that relief which she can only obtain in a Court of equity, and that the said defendant- may answer the premises, but not under oath or affirmation, the benefit whereof is expressly waived by your orator, she now prays the Court:

That said defendants may be required to produce said alleged writings consisting of the said private agreement of 1901, the decree of the District Court of Humacao in the *expediente de dominio*, deed of conveyance from Manuela Gutman to Victor Burset, deed from Victor Burset to Santiago Palmer and deed of conveyance from Santiago Palmer to the said Garzot and Fuertes, and the pretended mortgage executed by the said Victor Burset to the said Guillermo Landrón, and that they may be adjudged to be false and fraudulent and ordered to be delivered up to be cancelled and annulled according to the practice of Courts of Equity in like case; and that the Court issue said order to said Registrar of the Humacao district commanding him to make on his books as such at the proper place thereon the pendency of this suit, and that all of the said deeds and mortgages, as well as the said contract and the said

decree of the District Court of Humacao in the *expediente*
31 *de dominio* be decreed to be nulled and void and of no force or effect, and that the title of your oratrix in and to one-half of the properties hereinbefore described shall be by decree of this Court declared and established free and clear from all the said contracts, deeds, mortgages, decrees and proceedings herein above specifically set forth, and thereupon the Registrar of Property shall enter upon his record at the appropriate places in accordance with law such entries as may be necessary and proper, showing the existence of such decree of this court, and of the annulment and cancellation of all the entries and records of said false, fraudulent and illegal conveyances, decrees and proceedings.

And may it please your Honor to grant unto your orator a writ of subpœna issuing out of and under the seal of this Honorable Court, to be directed to the said defendants as hereinbefore set out commanding them and each of them on a certain day and under a certain penalty in the said writ to be inscribed, personally to be and appear before your honor in this Honorable Court, and then and there full, true and perfect answer make to all and singular the premises and further to stand, to perform and abide such further orders, directions and decree therein as to your Honor shall seem meet and shall be agreeable to equity and good conscience.

(Signed) MARIA RIOS DE RUBIO, *Complainant,*
By DEXTER & HORD,
Her Solicitors of Record.

32 MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Bill for Relief.

The Separate Plea of Petronila Patricia Rios de Noya, One of the Defendants, to the Bill of Complaint of Maria Rios de Rubio, Complainant.

This defendant, by protestation not confessing or acknowledging any or all of the matters and things in said bill of complaint set forth and alleged to be true in such manner and form as the same — thereby alleged, for plea in bar to the whole of said bill says:

That at a term of the Insular District Court for the District of Humacao, Porto Rico, which was held on the 10th day of December, A. D., 1901, the said present complainant, Maria Rios de Rubio, exhibited her complaint in that court against this defendant and one Manuela Gutman for the annulment of the private contract made between said parties on January 16, 1901, which is the same private contract in said complainant's present bill mentioned; and further praying for the annulment of the title of dominion obtained by the said Manuela Gutman, as a result of the making of said private contract before referred to, which title of dominion included and affected

the same lands as in complainant's present bill described; and further praying for the cancellation of the registracion of said title of dominion upon the records of the Registrar of Property for said District of Humacao; or, in the alternative, for the re-cis-ion of said private contract and the annulment of the registration of said title of dominion; and therein and thereby claiming the same shares and proportions of said real estate and the same rights and inter-
33 ests therein as she now claims by her present bill.

And the said complainant further in her said suit requested the said Insular District Court of Humacao to grant her an order directed to the Registrar of Property for said District requiring him to make preventive annotations upon his records so as to prevent the alienation of the said real estate in which the complainant alleged an interest, describing the said real estate therein, which is the same real estate in complainant's present bill mentioned and described; and the said complainant therein prayed relief against this defendant in the same manner, and for the same matters, and as to the same effect as the said complainant now prays by her said present bill.

And this defendant appeared and put in her answer to the said former complaint and has proceeded to final decree in favor of this defendant in said former cause in the said Insular District Court of Humacao the filing of complainant's present bill in this court and the said private contract and deeds the acts and proceedings of the parties there made have been decided and decreed to be valid and binding upon said complainant, as will more fully appear from a certified copy of the said proceedings in the Spanish language, with a true translation thereof, herewith filed and made a part of the plea. All of which several matters and things this defendant doth aver and pleads the said former complaint, answer and the said several proceedings in said former suit, in bar to the complainant's present bill, and humbly demands the judgment of this honorable Court whether she shall be put to make any further or other answer thereto; and prays to be hence dismissed with her costs and charges in this behalf sustained.

(Signed) S. B. PALMER,
Counsel for said Defendant.

34 UNITED STATES OF AMERICA, *District of Porto Rico:*

Petronila Patricia Rios de Noya, being duly sworn, says that she is the defendant in whose behalf the foregoing plea is interposed, that she has had the same read and translated to her and knows the contents thereof, that the matters and things in said plea set forth are true in point of fact, and that the same is not interposed for delay.

(Signed) PETRONILA PATRICIA RIOS DE NOYA.

Sworn to and subscribed before me this 14 day of November, 1903.

(Signed) ANTONIO DE ALDREY,
[SEAL OF NOTARY.] *Notary Public.*

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

(Signed) S. B. PALMER,
Of Counsel for said Defendant.

35 *Sentence of District Court of Hamacao Attached to Plea.*

I, Antonio F. Castro, Lawyer and Secretary of the Supreme Court of Justice of Porto Rico, do hereby certify:

That in the proceedings brought before the District Court of Humacao, by Doña Manuela Gutman, widow of Bustelo, and Doña Petronila Patricia Rios y Gutman de Noya and Doña Maria Rios y Gutman, widow of Rubio for a declaration of dominio of several rural properties, there is an entry reading as follows:

"Guayama, November sixteenth, nineteen hundred and one.—This case coming on to be heard, it appears that Lawyer Don José Maria Cuadra, in the name and in representation of the sisters, Doña Maria Rios Gutman, widow of Rubio, and Doña Petronila Patricia Rios Gutman, accompanied by her legitimate husband don Francisco Noya y Frias, and Lawyer Don Rafael Lopez Landron in the name and in representation of Doña Manuel Gutman, widow of Bustelo, filed with this Court, on the date of April twenty-sixth ultimo a petition praying that upon compliance with all legal provisions that a declaration be made in favor of the petitioner Doña Manuela Gutman that she has justified the dominio which she has over a rural parcel of land known by the name of "Islote" or, namely, "Ribarta Islet," composed of one hundred and fifty cuerdas of first class land the same being equivalent to fifty-eight hectares, ninety six ares, situated in the barrio of Rio-abajo of the jurisdiction of Naguabo, bounded on the North by the branch of the river called "Rio-Viejo" which separates it from lands of Don Juan Buxó now of Don Juan Garzot; on the East by the same branch called "Rio-Viejo" which separates it from the field (cercado) called
36 "Ramirez" of Doña Manuel Gutman, widow of Bustelo, to the confluence of this branch of the river or of the modern "Rio-Blanco"; on the South by the modern "Rio-Blanco" which separates it from other lands of Don Pilar Ogea, to-day of his successors, and on the West by lands of Don Cristino Lebron and of the estate of Don Ramon Argueso from a bamboo tree on the shore of the "River-Blanco" to the confluence of a ditch with the said branch of the river "Rio-Viejo," which said parcel of land has a value of seven thousand five hundred dollars.

In and to another parcel of land contiguous to the former known by the name of "Cercado Ramirez," composed of three hundred and fifty cuerdas and five hundred and thirty-thousandths of a cuerda, the same being equivalent to one hundred and thirty seven hectares, and seventy-seven ares of lands the greater part of which are first class and situated in the said barrio "Rio-abajo"; bounded on the North by lands of Don Juan Busó and by other lands called "San Francisco" which belonged to Don * * * Busó (first name illegi-

ble); on the East by Don José Perez Villamil, to-day by Don Prudencio Bariola, a ditch intervening formerly by Don Francisco Busó, by lands of Don Juan R. Guarzoy and of Don Ramon P. Villamil, formerly of Don Francisco Busó to a place near the mouth of the river "Rio-Blanco"; on the South by the river "Rio-Blanco" which separates it from Don José del Carmen Borge and from Don Prudencio Bariola and from the property called "Lugar de los Puentes" which belongs to Doña Manuela Gutman; and on the West,
37 sol I mean, by the river "Rio-Blanco" which separates it from the property called of "Madam Duran" belonging to the said lady Gutman and from lands of the estate of Don Ramon Argueso, formerly of Don Pedro Lebron and by part of the branch of the said river "Rio-Viejo" which separates it from the property of "Islote" known by the name of "Rabarta" belonging to the said Señora Gutman, which said parcel of land is valued at fifteen thousand nine hundred dollars.

In and to another parcel of land or rural property called of "Madam Duran" composed of one hundred and seven cuerdas, four hundred and sixty eight thousanths of a cuerda, the same being equivalent to forty-two hectares twenty-four ares level and mountain lands situated in the said barrio of "Rio-abajo" of the jurisdiction of Naguabo, bounded on the North by the river "Rio-Blanco" which separates it from the cercado "Ramirez" of Doña Manuel Gutman and by a part of the land of the estate of Don Ramon Argueso formerly of Don Pedro Lebron; on the West in part by the said river "Rio Blanco" which separates it from the said cercado "Ramirez" and, in part, by lands of Don Juan Busó; on the South by lands of Don Juan Busó and on the West, by lands of the estate of Don Ramon Argueso formerly of Don Pedro Lebron valued at three thousand seven hundred and fifty dollars.

In and to another parcel of land, rural, known by the name of "Los Puentes" situated on the place of the same name, barrio of "Rio-abajo" jurisdiction of Naguabo, composed of thirty six cuerdas
38 and two hundred and twenty-three thousandths of a cuerda, the same being equivalent to fourteen hectares and three ares the greater part of which are level lands, bounded on the North by lands of Don Juan Busó and the river Rio Blanco which separates it from the cercado "Ramirez" of Doña Manuel Gutman; on the East by the said Rio Blanco the dividing line of the cercado "Ramirez" of Señora Gutman and the lands of Don Francisco Busó; on the South by lands of Don Francisco Busó in a vertex or angle with the river "Anton Ruiz" and on the West by lands of Don Juan Busó in a vertex or angle with the said river "Anton Ruiz" and valued at fifteen hundred dollars.

In and to another rural parcel known by the name of cercado de "Torres" and also by the name of "Maisales," composed of two hundred and twenty-three cuerdas and one hundred and forty thousandths of a cuerda, the same being equivalent to eighty-seven hectares, seven hundred and twelve ares of first class lands and heights, situated in the river, I mean, in the barrio of "Rio-abajo" jurisdiction of Naguabo, bounded on the North by lands of Don

Jesus L. Pereyó formerly of Don Esteban Garriga; on the East, by lands of the said Pereyó, formerly Garriga, on the South by the property known as "Islote Quiñonez" from which the river separates it, by lands of the estate Rios y Berrios and by the river "Rio-Blanco" intervening between the two and on the West by the river "Rio-Blanco" which separates it in part from the lands of Don Arturo Gallardo and of Don Ramon Villamil and the rest is bounded by Don Marcelino Borges and Don Ramon Villamil, formerly Don Eladio Saldaña, and is valued at eight thousand five hun-
39 dred dollars.

In and to another rural parcel of land known by the name of "cercado de Maldonado" situated in the barrio of "Rio-abajo" jurisdiction of Naguabo, composed of thirty five cuerdas and one hundred and ninety five thousandths of a cuerda, the same being equivalent to three hectares eight hundred and thirty two ares of lower lands bounded on the North by lands of Don Zenen L. Pereyó, formerly Don Rodulfo Maldonado; on the East by a small creek which separates it from lands of the said Pereyó, formerly Maldonado and by the river "Rio-Viejo" which separates it from lands of the estate of Don Ramon Argueso, formerly of Don Cecilio Rodriguez: on the South by the river "Rio-Viejo" which separates it from the property called "Islote Quiñonez" which is owned by Doña Manuela Gutman and on the West by small creek which separates it from lands of the "Cercado de Torres" the property of the said Doña Manuela de Gutman and valued at one thousand seven hundred and fifty dollars.

And in and to another parcel of rural land known by the name of "Islote Quiñonez," situated in the barrio of "Rio-abajo" of the jurisdiction of Naguabo, composed of eighty-eight cuerdas and ninety five thousandths of a cuerda, the same being equivalent to thirty-four hectares and six hundred and twenty-eight ares of low lands, bounded on the North by the river "Rio-Viejo" which separates it from the "cercado Maldonado" and from the "cercado de Torres" both of them belonging to Doña Manuela de Gutman; on the
40 East by lands of the estate of Don Ramon Argueso, formerly of Don Cecilio Rodriguez, and to-day of Doña Carmen Fuertes; on the South by the river "Rio-Blanco" of Naguabo which separates it from lands of the estate of Don José Rios y Berrios, and on the West by the said River the plantation "Mulas" and "cercado de Torres," valued at four thousand four hundred dollars.

Which said properties were recently acquired by the solicitor Señora Gutman, widow of Bustelo, under title of a transaction made with her children by her first marriage, Doña Maria Rios, widow of Rubio, and Doña Petronila Patricia Rios de Noya who acquired them by testate inheritance from their legitimate father the late Don José Rios y Berrios; and which said properties are free from all encumbrances or liens and without written "dominio title" and in favor of the other two petitioners, Doña Maria and Doña Petronila Patricia Rios y Gutman that the declaration be equally made justifying the dominio which both of them have of an undivided interest by halves in and to a rural parcel of land which was formerly a

sugar cane plantation known by the name of "San José de las Mulas" situated in the place of "Las Mulas," barrio of "Anton Ruiz" and "Mambiche" jurisdiction of Humacao and in the barrio of "Rio-Blanco" jurisdiction of Naguabo and composed of one thousand six hundred and seventy six cuerdas and one hundred and twenty-six thousandths of a cuerda the same being equivalent to six hundred and fifty eight hectares, eight hundred and fifty-seven ares and sixty centares, of which three hundred and forty-six cuerdas five hundred and forty two thousandths of a cuerda are first class
41 meadow lands one hundred and twenty-two cuerdas and three hundred and ninety-nine thousandths of a cuerda are second class meadow lands, three hundred and seventy-seven cuerdas seven hundred and seventy-four thousandths of a cuerda upper meadow lands, fifty-five cuerdas seven hundred and ninety-two thousandths of a cuerda pasture lands, two hundred and sixty two cuerdas eight hundred and thirteen thousandths mountain lands, and five hundred and ten cuerdas eight hundred and five thousandths of a cuerda are broken lands, bounded on the North by the property "San Eladio" of Don José Perez Villamil, to-day of Don Prudencio Bariola and by the river "Rio-Blanco" which separates it from lands of the Rio's estate; on the East by lands of Pilar Ogea, estate of Manuel Rodriguez, estate of Don Ramon Argueso formerly of Don Pedro Lebron, of Don Tomá Lebrón today of his successors, of Doña Andrea Lebrón to-day of her successors of Don Francisco Busó and Don Luis Gautier to-day the estate of Don Rodulfo Perez; on the South by the lands of the estate of Don Atanasio J. Cuadra and of the estate of Don José Maria Rios, or namely, properties called, "Anton Ruiz," Pasto Viejo and "Mambiche" lately known by the name of "Los Braziles," and on the West by lands of Don Eugenio Labarte, to-day of Don Sabat Rocafort; and in that part of the jurisdiction of Naguabo by the property called "La Caciana" of Don Arturo Gallorda" to-day of Don Prudencio Bariola, which said parcel is valued at forty-four thousand five hundred and seventeen dollars and it must be stated that in the center of the plantation "Mulas" and contiguous to the establishments thereon there
42 is a parcel of land which is seggregated therefrom, composed of forty-cuerdas of *of* level lands, the same being equivalent to fifteen hectares sixty two ares and seventeen centares, bounded on the North by the vicinal road leading from the said plantation to Humacao and which separates it from lands of the same plantation belonging to-day by undivided halves to both sisters the petitioners Doña Maria and Doña Petronila Patricia Rios y Gutman, formerly the estate of Don José Rios y Berrios, on the South and east by lands of the said plantation "Mulas" and on the West by lands of the said plantation; which said parcel was seggregated in favor of the minor children of Don Miguel Antonio Bustelo y Sanchez named Doña Carolina, Don Miguel, Don Manuel, Doña Isabel and Doña Sarah Bustelo y Gutman, in virtue of a judicial public sale according to public instrument dated February fifteenth eighteen hundred and ninety-seven, executed before, Don Marcelino Estevanez Manclares,

Notary of Humacao, the recording of which in the Registry is now pending.

In and to another parcel of land called "Los Braziles" situated in the barrio of "Anton Ruiz," jurisdiction of Humacao, composed of one hundred and fifty-eight cuerdas and twenty-three hundredths of a cuerda the same being equivalent to sixty-two hectares, nineteen ares and eighty-five centares bounded on the North by the brook "Las Mulas" which separates it from the lands of the plantation "San José de las Mulas"; on the East by lands of the said plantation, on the South, by lands of the estate of Don Francisco Pou y Rios and of Don Atansio J. Cuadra and on the West by
43 lands of the estate Rios from which they are separated by the vicinal road of "Anton Ruiz" that leads from Humacao to Naguabo and is valued at six thousand three hundred and twenty dollars.

In and to another rural parcel of land known by the name of "Estancia Lebrón, situated in the said barrio of "Anton Ruiz" jurisdiction of Humacao, composed of twenty-five cuerdas and twenty-seven thousandths of a cuerda the same being equivalent to nine hectares and forty-nine ares of land the greater part of which are level lands bounded on the North by lands of Don Francisco and of Don Juan Busó making an angle at "Ausubos"; on the East by lands of Don Juan Busó and of Zoila Roman, formerly Andrea Lebrón making on one (side) only on the south by lands of Zoila Roman and Juan Lebrón, formerly, Andrea Lebrón and on the West by lands forming an angle (en piquete) of Don Francisco Busó and Juan Lebrón, formerly, Andrea Lebrón valued at seven hundred and seventy dollars.

In and to another rural parcel of land, nameless, situated in the jurisdiction of Humacao barrio of "Anton Ruiz" composed of eighteen cuerdas and forty hundredths of a cuerda of plain lands of the third class the same being equivalent to seven hectares, twenty-three ares nineteen centares, bounded on the North by lands of Don Eugenio Labart to-day of Don Sabat Rocafort and other lands of the plantation "Mulas" called "Los Morales," on the East by the vicinal road of "Anton Ruiz" which leads from Humacao to Naguabo; on the South by the vicinal road of "Mambiche," and on the West by lands of Don Lucas Pacheco, valued at three hundred and sixty eight dollars.

44 In and to another rural parcel of land, nameless, situated in the barrio of "Anton Ruiz" jurisdiction of Humacao, composed of forty-three cuerdas sixty-nine hundredths of a cuerda high and mountain lands, the same being equivalent to seventeen hectares, sixteen ares and nineteen centares, bounded on the North by the vicinal road of "Mambiche" and by the property formerly described, on the East and South by lands of Don Monserrate Rosa and on the West by other lands of the estate of Don Francisco Mandri, valued at four hundred and thirty six dollars and sixty-three centavos.

And in and to another rural parcel of land called "Estancia de Peña" situated in the barrio of "Anton Ruiz" jurisdiction of Humacao, composed of twenty cuerdas equivalent to twenty hectares,

eighty-six ares and eight centares, bounded on the North by the vicinal road which from the said barrio leads to the port of Humacao; on the East and South by the road leading from said barrio to the City of Humacao, by the place called "El Puerto" and by lands of Don Mauricio Peña: and on the West by lands of Don José A. De la Torre, valued at two thousand four hundred dollars, which said parcels were acquired by the petitioners the Señoras Rios Gutman by virtue of a transaction celebrated with their mother Doña Manuel Gutman widow of Bustelo as members that they are of the estate of Don José Rios y Berrios from whom they acquired these parcels by testate inheritance and which are also free from encumbrances and without written dominio title, and that upon the justification of the *of the* dominio title through the evidence proposed that the
45 record of all of the aforesaid properties be ordered made in the Registry of Property in favor of the petitioners.

It appears that Lawyers Cuadra and Lopez Landron having been admitted as parties on behalf of the petitioners, the Court by order of April twenty-sixth and for the purpose of enabling it to decide the petition ordered that it be shown from whom did Don José Rios y Berrios acquire the said properties which said order having been served, Lawyer Cuadra in compliance therewith by writing dated June seventeenth made the designation ordered and furthermore asked in said writing that summons issue addressed to all absent persons who may be prejudiced by the approval of the proceedings and through the Official newspaper of this Island, and the justification offered having been admitted it was ordered by the Court that a citation be served upon the Prosecuting Attorney, upon Doña Petronila Rios, widow of Toro, as heir of Don José Maria Rios, Doña Petronila Berrios and Doña Emilia Rios; upon Doña Amilia Rios de Pou or her legitimate representative Don José Toro Rios, upon Don Alfonso and Don Emilio Faura as heirs of Doña Avelina Rios de Pou, and upon Doña Josefa Soler y Rios de Rocafort, as heir of Doña Josefa Rios; and by edicts for the term of sixty days upon the absentees whose residence- are unk-own, Doña Avelina, Doña Emerita, Doña Josefa and Doña Carmen Faura, Don José Pou y Rios and Don Narciso Soler y Rios, notice being given by the said edicts which would be posted at public places and be published for three times in the official "Gazette" of this Island of the application made by the petitioners and further summon in the same manner and for the same term such unknown persons who may be prejudiced
46 by the record of the dominio title solicited that they may make their appearance to justify their rights, and the proposed evidence was admitted and the introduction thereof ordered.

It appears that after the application of the petitioners having been published by edict, Lawyer Cuadra, by writing filed July seventeenth, transmitted three numbers of the Official Gazette wherein the said edicts were published summoning the absentees whose whereabouts are unknown, which said numbers were to be attached to the record.

It appears that the said Lawyer Cuadra under date of July eighteenth filed a writing transmitting the private agreement of transaction as title for the acquisition of the properties referred to in this

proceeding which said agreement was entered into by and between Doña Manuela Gutman and her daughters, Doña Maria Rios, widow of Rubio, and Doña Petronila Patricia Rios de Noya, this latter being accompanied by her legitimate husband Don Francisco Noya Frias.

It appears that the witnesses Don Manuel Argueso Flores and Don Jesus Almiroty Porrata testified upon reading the application that they knew of their own knowledge that Doña Manuela Gutman, widow of Bustelo and Doña Maria Rios Gutman, widow of Rubio, and Doña Petronila Patricia Rios Gutman de Noya are owners, have possessed and do possess as such owners the rural properties the declaration of dominio title to which they solicit, which said properties were acquired by them under title of transaction celebrated by the said Señoras on the sixteenth day of January of the current year, in which said transaction they acted as witnesses and therefore
47 the facts related in the application are true.

It appears that Lawyer Cuadra in the name and in representation of Doña Petronila Patricia Rios de Noya only filed a writing under date of August twelfth setting forth that as no summons had been served upon the abutting owners represented by the attorney in fact Don José Toro Rios nor upon Doña Josefa Soler Rios, nor upon Doña Petronila Rios Viuda de Toro, that an order issue through him addressed to the Municipal Court of Humacao to have them so summoned which petition was granted by the Couht.

It appears that under date of August thirty-one Lawyer Don Juan F. Vias Ochotaco in the name and representation of Doña Maria Rios y Gutman, widow of Rubio filed a motion in opposition to the dominio proceedings brought by his client together with Señora Gutman, widow of Bustelo, and Señora Rios Gutman de Noya and asked that the said proceeding to which he was making opposition be approved in its main part with the expressed declaration that the properties acquired by Doña Manuela Gutman are so acquired as heir ab-intestate of her son Don José Rios Gutman and those belonging to his client and to her sister Señora Rios de Noya from the inheritance of their deceased father Don José Rios y Berrios and that in case that this decision should not be deemed proper then that the approval of the proceedings brought be absolutely denied for the reason that in the petition the true title of the acquisition of the properties adjudicated to the petitioner Señora Gutman widow of Bustelo, is not set forth therein and by an additional prayer he ac-
48 cepted as his own the evidence proposed by Lawyers Lopez Landron y Cuadra with the addition of such documentary evidence as was filed by him and is attached to the record which said evidence was admitted and it was ordered that the certified copies solicited by the said Lawyer Vias be issued to him.

It appears that on petition of Señora Cuadra, Lawyer, an order was issued addressed to the Municipal Court of Humacao for the summons of the abbut-ing property-owners represented by the attorney in fact Don José Toro Rios and of Doña Petronila Rios Viuda de Toro, and of Doña Josefa Soler Viuda de Rocafort, which said order having been duly complied with was returned by Lawyer Lopez Landron who solicited that inasmuch as the term of two

months granted for making opposition had expired and that no opposition was made that the record be referred to the Prosecuting Attorney.

It appears that the Prosecuting Attorney was of the opinion that these proceedings should be approved and that the record of the properties, the declaration of dominio title to which is referred to herein should be ordered made in the Registry of Property without reservation of any kind.

It appears that in this proceedings all legal provisions have been complied with.

The Associate Judge Don Juan Miguel Kearney y Alvarez acts as Judge Ponente in this case.

Whereas, in accordance with the provisions of Sections 1809 and 1816 of the Civil Code, a compromise agreed upon and adjusted between capable persons upon a licit matter is not only a v-lid
49 and efficient contract but it further has for the contracting parties the authority of *res-judicata*, and

Whereas, the opposition to proceedings of dominio authorized by Section 395 of the Mortgage Law is that of third persons cited for the proceeding and introduction of evidence and in no manner can such opposition be made by any of the parties soliciting the said dominio, and

Whereas, Doña Manuel Rios, I mean, Doña Maria Rios, widow of Rubio, is one of the solicitors of the said proceeding, she has signed the compromise which is the bases for instituting the said proceeding, she has agreed upon the adjudication to each of the interested parties according to the terms of the compromise (Clauses 3 and 4) she has accepted as her own the corroborative evidence of the very facts of the compromise and she cannot exercise legally against her own acts such actions as could be exercised by strange persons to the institution of dominio proceedings, and

Whereas, it is left to the Court to consider the weight of the evidence introduced and the allegations made approving or disapproving the claims made and making the declarations that the dominio has been justified, and

Whereas, the Court after a consideration of the true value and extent of the evidence introduced it is of the opinion that a writ of approval of this proceeding should issue,

Now therefore, in view of the Articles of Law above cited and of all others applicable hereto, the Judges of the Court, Don Salvador Fulladosa and Don Juan Miguel Kearney, before, me the Secretary, said:

50 That they do declare the justification of the dominio of the properties in the manner solicited and proposed by the petitioners Doña Maria Rios widow of Rubio, Doña Petronila Patricia Rios y Gutman de Noya this latter accompanied by her husband Don Francisco Noya y Frias and Doña Manuel Gutman widow of Bustelo in the terms appearing from the statement of facts set forth herein in consequence of which it is ordered that the full dominio of the property hereinabove described of the respective petitioners be recorded in accordance with said terms in the Registry

of Property, without limitation or reservation of usufruct. And the Acting Judge Don Jacinto Texidor said: That he understands that in this class of proceedings a declaration should be made only as to whether or not the dominio has been justified; that these proceedings should be approved with the declaration justifying the dominio of the properties in favor of the petitioners without any further declarations. It was so stated and signed by the Judges whose names appear at margin hereof and I certify.—Salvador Fulladosa.—J. M. Kearney.—Ledo. Jacinto Texidor.—José R. Aponte."

A true translation:

51 In the United States District Court for Porto Rico. In Chancery.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Bill to Cancel Deeds, etc.

The Joint and Several Plea of Victor Burset and Santiago R. Palmer, Two of the Defendants, to the Bill of Complaint of Maria Rios de Rubio, Complainant.

These defendants, by protestation not confessing or acknowledging any or all of the matters and things in said bill of complaint contained to be true in such manner and form as the same are thereby alleged, for plea to the whole of said bill say:

That these defendants respectively claim and derive their title to all and singular the various tracts of land described in said bill of complaint by or through valid conveyances made by one Manuela Gutman to the defendant Victor Burset on or about the 30th day of April, A. D. 1902, subsequent to the proceedings hereinafter set forth.

That at a term of the Insular District Court for the District of Humacao, Porto Rico, held on the 26th day of April, 1901, the present complainant Maria Rios de Rubio, together with the said Manuela Gutman and one Petronila Patricia Rios, joined by her husband Francisco Noya, presented their petition to said court praying that said court would declare valid their title of dominion to various rustic estates in said petition described, some in the name of said Manuela Gutman and others in the name of complainant and Petronila Patricia Rios in undivided equal parts, and therein alleging that they had acquired their titles to said respective estates by virtue of a settlement made between them, the complainant

52 and said Petronila Patricia Rios being sisters and the said Manuela Gutman being their mother, that said property had been derived from the estate of the father of said sisters, José Rios y Berrios, and that they were his heirs at law; also praying that their respective titles, when adjudicated, might be ordered duly

inscribed in the Registry of Property for the proper District. That the lands thereafter acquired by these defendants as alleged in the bill of complaint herein were in said petition included in and a part of the same lands which said petition prayed should be adjudicated by title of dominion to the said Manuela Gutman.

That among the proofs offered in said Insular District Court in support of said petition was the private agreement or settlement made between said three parties, dated the 16th day of January, 1901, which is the same private contract which the complainant's present bill of complaint is brought to annul. That during the progress of said proceeding the attorney representing therein the present complainant, who was Don José Maria Cuadra, withdrew as such attorney on the 29th day of July, 1901, and was replaced on the 31st day of August of the same year by Lawyer Juan F. Vias, who thereupon in the name of the complainant in this suit, his client, requested the definite approval of the proceedings instituted with the additional declaration that the properties acquired by the said Manuela Gutman came as an inheritance from her son José Rios y Gutman and that those belonging to the sisters came from the inheritance of their said deceased father, at the same time opposing the approval of said titles in the form prayed in said petition because the real title of acquisition of the properties adjudicated to said Manuela Gutman had not been set forth in said petition.

That thereafter in the course of said proceedings the said complainant herein, through her said attorney Juan F. Vias, produced and submitted for the consideration of said court such proofs
53 touching her said contentions as she was advised were necessary and proper, and thereafter on the 16th day of November, 1901, the said Insular District Court of Humacao entered its final decree in said cause to the effect that the said private agreement or settlement, which this court in the present suit is asked to declare null and void, was valid and binding upon all the parties thereto, that the opposition made by said complainant had no legal foundation, that the title of dominion to the various tracts of real estate, which are the same described in the bill of complaint in this cause, and which this court is now asked to cancel should be confirmed in the manner prayed for in the petition in said court without limitation or reserve and should be ordered inscribed in the Registry of Property as prayed.

That from said final decree the said complainant Maria Rios interposed her writ of error to the Supreme Court of Porto Rico and was there represented by her said attorney Juan F. Vias, and the said Supreme Court, after hearing the appellant and considering all the questions presented, on the 4th day of June, A. D. 1902, pronounced and published its sentence and decree that the errors complained of by said Maria Rios had no legal foundation, and that the aforesaid decree of said Insular District Court of Humacao should be affirmed.

And these defendants aver that by virtue of the proceedings aforesaid the very same claims and contentions made by the complainant in the present suit touching the same matters and property and to the same effect have been already considered and adjudged as be-

tween the said complainant and the privies in title of these defendants in the said Insular District Court of Humacao and the Supreme Court of Porto Rico, and that the same now are and remain *res judicata;* all of which will more fully appear from a certified copy of the said sentence or decree of said Supreme Court, with a true translation thereof, herewith filed and made a part of this plea.

54 All which several matters and things these defendants do aver and plead the said former proceedings and decrees in said former suit in bar to the complainant's present bill, and humbly demand the judgment of this honorable Court whether they shall be put to make any further or other answer or defence thereto, and pray to be hence dismissed with their costs and charges in this behalf sustained.

(Signed) JUAN HERNANDEZ LOPEZ,
" RAFAEL LOPEZ LANDRON,
" N. B. K. PETTINGILL,
Counsel for Defendants Victor Burset and Santiago R. Palmer.

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

(Signed) N. B. K. PETTINGILL,
Of Counsel for said Defendants.

UNITED STATES OF AMERICA, *District of Porto Rico:*

Victor Burset and Santiago R. Palmer, being duly sworn, say that they are the defendants in whose behalf the foregoing plea is interposed, that they have knowledge of the matters in said plea alleged and that the same is true in point of fact; and that said plea is not interposed for delay.

(Signed) S. R. PALMER.
" VICTOR BURSET.

Sworn to and subscribed before me this 17" day of November, 1903.

(Signed) H. H. SCOVILLE, *Clerk.*
FRANK ANTONSANTI, *D. C.*

55 In the United States District Court for Porto Rico. In Chancery.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Bill to Annul Deeds.

The Joint Plea of Juan R. Garzot and Faustino R. Fuertes, as Co-partners under the Firm Name of Garzot y Fuertes, Two of the Defendants, to the Bill of Complaint of Maria Rios de Rubio, Complainant.

These defendants, by protestation not confessing or acknowledging any or all of the matters and things in said bill of complaint set forth and alleged to be true in such manner and form as the same are by said bill alleged, for plea to the whole of said bill say:

That these defendants claim and derive their title to the tracts of land described in said bill as being in their possession by virtue of valid conveyances made by one Manuela Gutman on or about the 30th day of April, A. D. 190–: That at a term of the Insular District Court for the District of Humacao, Porto Rico, held on the 26th day of April, 1901, the present complainant Maria Rios de Rubio, together with the said Manuela Gutman and one Petronila Patricia Rios y Gutman, joined by her husband Francisco Noya, presented their petition to said court praying that said court would declare valid their title of dominion to various rustic estates in said petition described, some in the name of said Manuela Gutman and others in the name of said complainant and Petronila Patricia Rios in undivided equal parts, and therein alleging that they had acquired their titles to said respective estates by virtue of a settlement made between them, the complainant and said Petronila Patricia Rios
56 being sisters and the said Manuela Gutman being their mother, that said property had been derived from the estate of the father of said sisters, José Rios y Berrios, and that they were his heirs at law; also praying that their respective titles, when adjudicated, might be ordered duly inscribed in the Registry of Property for the proper District. That the lands thereafter acquired by these defendants as alleged in the bill of complaint herein were in said petition included in and a part of the same lands which said petition prayed should be adjudicated by title of dominion to the said Manuela Gutman.

That among the proofs offered in said Insular District Court in support of said petition was the private agreement or settlement made between said three parties, dated the 16th day of January, 1901, which is the same private contract which the complainant's present bill of complaint is brought to annul. That during the progress of said proceeding the attorney representing therein the present complainant, who was Don José Maria Cuadra, withdrew as such at-

torney on the 29th day of July, 1901, and was replaced on the 31st day of August of the same year by Lawyer Juan F. Vias, who thereupon in the name of the complainant in this suit, his client, requested the definite approval of the proceedings instituted, with the additional declaration that the properties acquired by the said Manuela Gutman came as an inheritance from her son José Rios y Gutman and that those belonging to the sisters came from the inheritance of their said deceased father, at the same time opposing the approval of said titles in the form prayed in said petition because the real title of acquisition of the properties adjudicated to said Manuela Gutman had not been set forth in said petition.

That thereafter in the course of said proceedings the said complainant herein, through her said attorney Juan F. Vias,
57 produced and submitted for the consideration of said court such proofs touching her said contentions and opposition as she was advised were necessary and proper, and thereafter on the 16th day of November, A. D. 1901, the said Insular District Court of Humacao entered its final decree in said cause to the effect that the said private agreement or settlement, which this court in the present suit is asked to declare null and void, was valid and binding upon all the parties thereto; that the opposition made by said complainant had no legal foundation; that the title of dominion to the various tracts of real estate, which are the same described in the bill of complaint in this cause, and which this court is now asked to cancel, should be confirmed in the manner prayed for in the petition in said court without limitation or reserve, and should be ordered inscribed in the Registry of Property as prayed.

That from said final decree the said complainant Maria Rios interposed her writ of error to the Supreme Court of Porto Rico and was there represented by her said attorney Juan F. Vias, and the said Supreme Court, after hearing the appellant and considering all the questions presented, on the 4th day of June, A. D. 1902, pronounced and published its sentence and decree that the errors complained of by said Maria Rios had no legal foundation, and that the aforesaid decrees of said Insular District Court of Humacao should be affirmed.

And these defendants aver that by virtue of the proceedings aforesaid the very same claims and contentions made by the complainant in the present suit touching the same matters and property and to the same effect have been already considered and adjudged as between the same complainant and the privies in title of these defendants in the said Insular District Court of Humacao and the Supreme Court of Porto Rico, and that the same now are and remain *res judicata;* all of which will more fully appear from a certified copy of the said sentence or decree of said Supreme Court of Porto
58 Rico, with a true translation thereof, herewith filed and made a part of this plea.

All which matters and things these defendants do aver and plead the said former proceedings and decrees in said former suit in said Insular Courts in bar to the complainant's present bill, and humbly demand the judgment of this honorable Court whether they shall

be put to make any further or other answer or defense thereto, and pray to be hence dismissed with their costs and charges in this behalf most wrongfully sustained.

(Signed) JUAN HERNANDEZ LOPEZ,
" RAFAEL LOPEZ LANDRON,
" N. B. K. PETTINGILL,
Counsel for Defendants Garzot y Fuertes.

59 UNITED STATES OF AMERICA, *District of Porto Rico:*

Faustino Rodriguez Fuertes, being duly sworn, says that he is one of the members of the firm of Garzor y Fuertes, in whose behalf the foregoing plea is interposed, that he knows the contents thereof, and that the matters and things in said plea set forth are true in point of fact, and that the same is not interposed for delay.

(Signed) FAUSTINO R. FUERTES.

Sworn to and subscribed before me this 14th day of November, A. D., 1903.

(Signed) ANTONIO DE ALDREY,
[SEAL OF NOTARY.] *Notary Public.*

I hereby certify that in my opinion the foregoing plea is well founded in point of law.

(Signed) N. B. K. PETTINGILL,
Of Counsel for Defendants Garzot y Fuertes.

60 Certified copy of the decision rendered by the Supreme Court in the appeal of cassation taken by Doña Maria Rios y Gutman from the decision of the District Court of Humacao, rendered in the *ex parte* proceedings of dominion of several rural estates, instituted by Doña Mañuela Gutman widow of Bustelo, and her daughter- Doña Maria and Doña Petronila Rios y Gutman:

61 I, Licenciate, Antonio F. Castro, Secretary of the Supreme Court of Justice of Porto Rico,

Certify: That by said Court there was rendered on the fourth of June, 1902, the following decision:

In the City of San Juan, Porto Rico, on the fourth of June, 1902, in the *ex parte* proceeding instituted in the District Court of Humacao by Doña Manuela Goodman, widow of Bustelo, and her daughters Doña María and Doña Petronila Patricia y Goodman, to prove the dominion of several rural estates, the same pending before us by virtue of an appeal of cassation for violation of law, taken by Doña Maria Rios y Goodman, represented by the lawyer Don Juan F. Vias, the lawyer Don Rafael Lopez Landrón having been in charge of the representation and defense of Doña Manuela Gutman, Doña Petronila Patricia Rios y Gutman not having appeared before this court.

It appearing that the lawyers Don Rafael Lopez Landron and Don José Maria Cuadra, the former representing Doña Manuela Gutman,

widow of Bustelo, and the latter in the name of the sisters Doña Maria Rios y Gutman, widow of Rubio, and Doña Petronila Patricia of the same surnames, accompanied by her legitimate husband Don Francisco Noya, filed a petition in the District Court of Humacao on the 26th of April of last year, praying that by virtue of the evidence which introduction they proposed, and of the other evidence which they might deem proper, there should be declared at the proper time as proven the dominion of several rural estates therein expressed, some of them as belonging to Doña Manuela, and others in an undivided half to her said daughters Doña María and Doña Petronila Patricia, all of which properties were absolutely freed from charges and incumbrances, of which they had no
62 written title of dominion, and which they had acquired by virtue of a settlement made between the mother and the daughters as forming the estate of Don Jose Rios y Berrios, from whom they derived their rights, and from whom said properties proceeded, and ordering, in consequence thereof, that they should be inscribed in the Registry of Property of said district, in the manner alleged.

It appearing that among the evidence annexed to the record there appears the private agreement of settlement which was signed by the moving parties and their attorneys in the city of Humacao on the 16th of January of said year, before the witnesses Don Manuel Argueso and Don Jesus Almiroty, which agreement was introduced by the attorney for the sisters Doña María and Doña Petronila Patricia Rios, as the title of acquisition of the properties without any incumbrance whatsoever, and which authenticity has not been assailed, the witnesses aforesaid having testified as to the existence of that settlement.

It appearing that in the course of the proceedings the lawyer Don José María Cuadra, by petition of the 29th of July renounced the representation of Doña María Ríos, which he had had, which representation was declared as renounced on the same date, and there having appeared with that representation the lawyer Don Juan F. Vias on the 31st of August following, he petitioned in the name of Doña María that there should be finally approved the *ex parte* proceedings instituted, with the express declaration that the properties acquired by Doña Mañuela Gutman were with the character of abintestate inheritance from her son of the first marriage, Don José Rios y Gutman, and that those belonging to the sisters Rios y Gutman proceeded
63 from the inheritance of their deceased father, Don José María Rios y Berrios, denying in case it should not be so declared the approval requested, because of not stating in the petition instituting the proceeding the real title of acquisition of the properties adjudicated to Doña Mañuela Gutman, widow of Bustelo, he having enlarged the evidence previously offered.

It appearing that among the evidence introduced by the attorney for Doña María Rios there appear the certificate of death of Don José María Rios y Berrios, the certificates of birth of his daughters Doña María and Doña Petronila Patricia Rios y Gutman, and of his son Don José María of the same surname, the declaration of

heir abintestate of Don José Rios y Gutman made in favor of his mother Doña Mañuela by decree of the 20th of April, 1892, copies of the instrument containing the properties adjudicated to Don Jose Maria Rios y Berrios in the partition of the properties of his parents Don José María Rios and Doña Petronila Berrios, copy of the testament of Don José María Rios y Berrios executed by the grantee of the power of attorney, and a certificate seriatim of several titles of ownership of properties acquired by Don José María Rios y Berrios, without it appearing that the partition and adjudication of the properties left upon the death of Don Jose Maria Rios y Berrios have been made.

It appearing that the District Court of Humacao by order of the 16th of November ultimo held that the settlement agreed between capable persons upon a lawful matter is not only a valid contract, but for the parties executing it has the authority of *res adjudicata*, in accordance with Articles 1809 and 1816 of the Civil Code;
64 that the opposition to the *ex parte* proceedings of dominion referred to in Article 395 of the Mortgage Law, cannot be made by the parties instituting said *ex parte* proceeding, one of which in this case is Doña María Rios; that she accepted the settlement invoked as a title of dominion of the properties to which the *ex parte* proceeding refers, and that it is for the court to weigh the evidence introduced and the allegations made, and in consequence thereof, in conformity with the prosecuting attorney, it declared as proven the dominion of the properties in question in the manner requested and proposed by the parties moving, ordering that said dominion be inscribed in the Registry of Property, without any limitation or reservation of usufruct whatsoever.

It appearing that from said order the attorney for Doña María Rios took an appeal of cassation for violation of law, authorized by paragraphs 1st, 2nd and 3rd of Article 1690 of the Law of Civil Procedure, assigning as error the violation of Article 395 of the Mortgage Law, because the proceedings of dominion can only be instituted when there is no written title of it, which is not the case herein, because it has been proven that the properties in question were acquired by a perfect title by Don José Maria Rios y Berrios, from whom his daughters Doña María and Doña Petronila Patricia acquired them, by virtue of his testament, Doña Mañuela Gutman having acquired hers through intestate inheritance from her deceased son Don José María Rios y Gutman; which violation of Article 395 has also been committed inasmuch as after having admitted the motion of opposition of Doña María Rios and accepted the evidence tending to prove it, the order appealed from could not have been given without previously hearing all the parties in interest, which order does not cover the claims made by Doña María, which have not been decided; besides the construction given
65 to said article in the second conclusion of law of the order appealed from has been erroneous in denying to Doña María Rios her right to oppose the approval of said *ex parte* proceedings because of the fact of she having instituted it, which does not deprive her of her character of party in interest to the same.

It having been heard and the same being assigned to the Associate Justice Don José C. Hernandez.

Considering that the approval by the District Court of Humacao of the proceeding of dominion instituted by Doña Mañuela Gutman and her daughters Doña Maria and Doña Petronila Rios, did not violate Article 395 of the Mortgage Law, on the ground of being said proceeding inadmissible because the parties having had a written title of dominion, as although the former had been declared heir abintestate of her son Don José Rios y Gutman and Doña María and Doña Petronila be heirs of their father Don José Rios y Berrios, and the three of them be therefore co-owners in the common ownership of the properties belonging to the estate of the deceased Rios y Berrios, as it does not appear that a partition of this inheritance has been made, it cannot be said that either Doña Mañuela or her daughters have a dominion upon determined properties of the same, as the partition legally made only grants that dominion in accordance with Article 1068 of the Civil Code.

Considering that the trial court admitted the opposition made by Doña Maria Rios to the *ex parte* proceeding of dominion and the evidence introduced in support thereof, and although it failed to comply with Rule III of Article 395 of the Mortgage Law, which provides that the prosecuting attorney and others who have ap-
66 peared in the proceeding should be heard in writing as to the claims and evidence presented, the violation of this provision of law, supposing that it might be applicable to the case in question, as it is of an adjective nature or relating to procedure could never be the ground of an appeal of cassation for violation of law.

Considering that even supposing that the construction given by the trial court to Article 395 of the Mortgage Law was erroneous, in holding in one of its conclusions of law that Doña Maria Rios could not oppose the proceeding of dominion because she instituted it in conjunction with her mother Doña Mañuela and her sister Doña Petronila, the reversal of the order appealed from would not be proper, as it would be always sustained by the essencial and necessary foundation of the same, which is the declaration made by the District Court of Humacao of having been proven the dominion of the properties in question, without any limitation or reservation whatsoever, which declaration cannot be discussed in cassation, because the appeal of cassation was not founded upon Paragraph 7 of Article 1690 of the Law of Civil Procedure.

Considering that the order appealed from conforms to all the claims made by the parties and does not grant more than was prayed for, as it is thereby granted the prayer made by Doña Manuela Gutman and her daughters Doña Maria and Doña Petronila in the petition instituting the *ex parte* proceeding of dominion, and the claim made by Doña Maria through her attorney Don Juan F. Vias is denied.

Considering in consequence thereof that the appeal taken is improper for all and each one of the grounds thereof.

We hold that we should declare and do hereby declare that the

appeal of cassation taken by Doña Maria Rios y Gutman
67 cannot be sustained, to whom we condemn to the payment of costs; and with the return of the record this decision shall be certified to the District Court of Humacao to the corresponding effects. Thus by this our decision, which shall be published in the Official Gazette, we pronounce it, order it and sign.

JOSÉ S. QUIÑONES.
JOSÉ C. HERNANDEZ.
JOSÉ M. FIGUERAS.
LUIS SULZBACHER.
J. H. MacLEARY.

Publication.—The foregoing decision was read and published by the Associate Justice of the Supreme Court Don José C. Hernandez, holding a public session of said court on this day, to which I, as Secretary, certify to, in Porto Rico, on the 4th of June, 1902.

ANTONIO F. CASTRO.

It is a faithful and exact copy of its original kept in the archives of this office and to deliver to the lawyer Don Rafael Lopez Landron in conformity with the order of the Supreme Court of yesterday, I issue the present certified copy in Porto Rico on the 11th of November, 1903.

Interlined—same.—valid.

(Signed)

A. F. CASTRO,
Secretary of the Supreme Court.

There is a seal of the Supreme Court.

There are five revenue stamps, two of $1, one of $3, and one of 50¢ and another of 10¢.

[Endorsed:] U. S. Dist. Ct. Maria Rios *vs.* Victor Burset *et al.* Exhibit A. Decision of Supreme Ct. of P. R. Exhibit "1" for def'ts.

68 In Chancery.

MARIA RIOS DE RUBIO
versus
VICTOR BURSET ET AL.

Motion to Amend Bill of Complaint.

Filed March 8, 1904.

Now comes complainant María Ríos de Rubio and represents to this Honorable Court that having heretofore filed herein her bill of complaint against defendants Petronila Patricia Rios de Noya and her husband Francisco Noya; Victor Burset, Santiago R. Palmer, Juan A. Garzot and Faustino Fuertes, composing the firm

of Garzot and Fuertes; thereafter defendants Victor Burset and Santiago R. Palmer filed their joint and several plea to said bill; and Juan A. Garzot and Faustino Fuertes as co-partners under the firm name of Garzot & Fuertes filed their joint and several plea to said bill; and Petronila Patricia Rios de Noya filed her plea to said bill of complaint herein.

Complainant avers that in and by the said plea, respectively, there were declared and set up as a defense to complainant's bill of complaint certain alleged proceedings in the District Court of Humacao and in the Supreme Court of Porto Rico in and by which the said defendants respectively sought and seek to make and establish the defense of *res adjudicata* or a former adjudication.

Complainant, in accordance with the rules and usages of Chancery and for the purpose of replying thereto, hereby tenders the following amendments to her bill of complaint and prays of this Honorable Court to allow the same as a part of her bill of complaint herein.

Complainant prays that on the seventh page of her amended bill of complaint and after the words "did declare to adjudicate the title of your oratrix in and to the said property in and to
69 the said Manuela Gutman and declared her the sole and absolute owner of all and several of the said property described herein, although the title of the one half interest therein was in your oratrix" insert the following:

Your oratrix avers that the said José María Cuadra pretending to act as her attorney and without her authority conspired with the said Manuela Gutman and defendant Petronila Patricia Ríos de Noya, being the attorney at the same time and in the said proceedings of defendant Petronila Noya, to defraud your oratrix by divesting from her by the said illegal and void and *ex parte* proceedings the title which your oratrix had and has to the properties herein described, which she acquired as aforesaid from her deceased father and deceased brother respectively.

Your oratrix avers that although the object of the said Manuela Gutman and defendant Petronila Noya, conspiring with the said José María Cuadra, as aforesaid, was by the said proceedings to declare valid their alleged title of dominion to the said property yet in law and in fact this was not done nor did the said District Court of Humacao have any power or authority to make any such declaration; and your oratrix avers that if any such declaration was made by the said Court it was altogether illegal and void and, on the contrary, it was in fraud of the rights of your oratrix.

Your oratrix avers that immediately upon learning of the said proceedings and of the unauthorized appearance of the said José María Cuadra who assumed to act in her behalf, she appeared in the said proceedings in the District Court of Humacao by and through her attorney Don Juan Vias Ochoteca, for the sole and only purpose of objecting to the same and to the jurisdiction of the Court to establish the dominion title as prayed therein and your oratrix by her said attorney Vias Ochoteca demanded that her

rights and interest in the said properties acquired by her through inheritance from her deceased brother should be recognized and declared.

70 Your oratrix avers that in addition to the interest which she had in and to the said properties by inheritance from her deceased father she also had, at the time of the said proceedings aforesaid, a residuary interest and title in that part of her said father's estate which had been inherited by her deceased brother José Rios y Gutman, the son of Doña Manuela Gutman by her first marriage with the father of your oratrix Don José María Rios y Berrios.

And your oratrix avers that the said Manuela Gutman, Petronila Rios and José María Cuadra conspiring together for the purpose of defrauding your oratrix wrongfully and unlawfully in and by the said proceedings, sought to establish the dominion of Doña Manuela Gutman in and to all of the properties aforesaid as the widow of the said José María Ríos y Berrios, thereby seeking to deprive your oratrix of the residuary interest or title which she had and has in and to that part of the estate of her deceased father inherited by her brother José Ríos y Gutman in which your oratrix was entitled to the one half interest upon and after the death of the said Manuela Gutman.

And your oratrix avers that in and by the said illegal proceedings as aforesaid in the District Court of Humacao there was sought to be declared without authority of law the absolute dominion of the said Manuela Gutman in and to said properties thus depriving your oratrix without due process of law of the residuary interest which she had and has in and to that part of the estate inherited by and through her said deceased brother as also the interest and title which she inherited from her deceased father.

Your oratrix avers that said private agreement hereinbefore referred to was not and could not be validly adjudicated by the said Court and in the said proceedings which was not a suit at law but only an *ex parte* proceedings and said Court did not and could not declare in said proceedings the validity or invalidity of said contract.

71 And your oratrix avers that the said proceedings were *ex parte* without due process of law and that neither the title now claimed by your oratrix from her said father and her said brother as herein set forth were nor could be adjudicated nor was there nor could there be a judgment or decree sustaining or validating the said alleged private agreement.

And your oratrix further avers that although thereafter the Supreme Court of Porto Rico affirmed the proceedings of the said District Court of Humacao in the said *ex parte* proceedings, as aforesaid, that the sentence of the Supreme Court does not affect or bind your oratrix for the reason that the title of your oratrix in and to the said properties as aforesaid and the validity of the said private agreement were not in issue in the said dominion proceedings and no judgment or decree was entered therein binding or affecting your oratrix.

And your oratrix avers that her title to the said property and the validity of the said private contract were not determined by the said proceedings and further more that all of the said proceedings are null and void as against your oratrix.

By adding and inserting in the prayer of complainant's bill after the "words" said decree of the District Court of Humacao in the *expediente de Domino* be decreed to be null and void and of no force and effect and that the following "that an account be taken of all the foregoing properties and assets and all other properties in which complainant may have an interest; that a master be appointed to take such accounting and ascertain all the property, real, personal and mixed, belonging to the estate of Don José María Ríos y Berríos, Doña Manuela Gutman and Don José Ríos y Gutman, and the participation or interest therein which corresponds to your oratrix, and upon the filing of this report this Court shall decree a partition and division thereof in the proportion of one-half to your oratrix, and shall declare by its decree the right of your oratrix as
72 aforesaid in and to the same; and that the Court issue and order upon the partition of the foregoing properties, to the Registrar of Property of the Humacao District where said properties are located, commanding him to register the title of your oratrix as aforesaid in and to said properties, free and clear from all the said contracts, deeds, mortgages, decrees and proceedings hereinabove specifically set forth and that the Registrar of Property shall enter upon his record at the appropriate places in accordance with law, such entries as may be necessary and proper, showing the existence of such decree of this Court, and of the annulment and cancellation of all the entries and records of said false, fraudulent and illegal contracts, deeds, mortgages, decrees and proceedings above specifically set forth.

By striking from the prayer of said bill the part thereof which begins with the words "the title of your oratrix in and to one-half of the properties hereinbefore described" and the rest which follows to the prayer for subpœna.

(Signed) "

F. H. DEXTER,
JOSÉ HERNANDEZ,
Solicitors for Complainant.

73 *Order Allowing Amendment to Bill of Complaint.*

(Order Book, p. 353, March 8, 1904.)

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Now comes the complainant Maria Rios de Rubio by her solicitors F. H. Dexter and José Hernandez and upon notice filed herein moves for leave to amend her bill; to which the defendants by their soli-

citors N. B. K. Pettingill and S. B. Palmer object. The complainant presents her proposed amendment in the form of a written motion which is tendered and the matter being heard the same is allowed to be filed and the defendants elect to stand by their pleas already filed.

(Signed) WM. H. HOLT, *Judge.*

74 In Equity.

MARIA RIOS DE RUBIO
versus
VICTOR BURSET ET AL.

Setting of Pleas Down for Argument.

Comes now complainant and sets down for argument the following pleas herein:

(1) The joint and several plea of Victor Burset and Santiago R. Palmer.

(2) The joint plea of Juan A. Garzot and Faustino A. Fuertes as co-partners under the firm name of Garzot & Fuertes.

(3) The separate plea of Petronila Patricia Rios de Noya.

Complainant moves the Court to refer the said pleas and the argument thereon without delay to a master with instructions to hear the argument and to report to this Court at his earliest convenience.

San Juan, Porto Rico, March 11th, 1904.

(Signed) F. H. DEXTER,
Solicitor for Complainant.

75 Order Book Entry (March 19, 1904).

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Order.

The pleas herein having been set down for hearing the complainant appeared by her solicitors F. H. Dexter and José Hernandez and J. F. Vias Ochoteco, and the defendants by their solicitors Juan Hernandez Lopez, N. B. K. Pettingill and S. B. Palmer, and the parties being heard and upon the hearing the solicitors for the defendants asking time until March 28, 1904, to determine whether they will tender and move to file an answer as to the fraudulent averments in the bill in support of their pleas, and such motion being considered such time is granted; and subject to the privilege to so move and tender an answer if defendants see fit, said cause is submitted upon the pleas. Time is given until March 28, 1904, to file briefs, upon motion of parties.

76 *Answer of Petronila Patricia Rios De Noya in Support of Plea.*

(Filed March 28, 1904.)

In Chancery.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

And now comes Petronila Patricia Rios de Noya by her solicitor S. B. Palmer, and as answer to the amended bill of complaint of the Complainant says:

That she denies absolutely that she ever conspired or colluded with anyone to defraud the interests of the complainant herein.

And your orator avers that she and the complainant herein, her sister, instituted several legal proceedings against their mother, Mrs. Manuela Gutman, (now deceased), and finally to avoid further litigation, your orator and complainant herein entered into a private agreement or contract by which they agreed to divide between them certain property, called the "Hacienda Mulas," composed of some one thousand cuerdas of land and in said private document or agreement your orator and complainant herein agreed that the said Mrs. Manuela Gutman should keep the farms in the district of Naguabo, which said farms in said district of Naguabo are the same as the complainant now wrongfully claims.

And your orator further avers that by the tenor of the said private agreement each of the parties thereto were to remain the exclusive owners of the various properties therein fixed for them, that is to say your orator and the complainant herein were to take the hacienda Mulas, and your orator's and complainant's mother was to receive the farms situated in the district of Naguabo.

The aforesaid properties did not at that time possess any title of "dominio" and your orator, complainant and their mother, the said Manuela Gutman, agreed that a dominio title should be obtained, and thereby did apply for it to the Humacao district court,
77 which said dominio title the said court by its final decree did grant unto your orator and to your orator's mother, Manuela Gutman, the said dominio titles, and although the complainant herein, not being satisfied with the way the said titles of dominio were granted, she appealed to the Supreme Court of Porto Rico, and the said Supreme Court by its final judgment, dated — did confirm all the proceedings of the Humacao District Court, and the same are to this day binding and effective; that by virtue of the said *expediente de dominio* as granted by the Humacao Court, and later confirmed by the Supreme Court, your orator and the complainant herein, became the sole and absolute owners of the "Hacienda Mulas," and your complainant's mother the owner of the farms in Naguabo, and as such owners of the dominio could sell and encumber their portions as they saw fit to do.

And your orator lastly says that no harm could overcome her if these transactions should be annul-ed by this Honorable Court, because according to law, half of any property that would be adjudicated to complainant herein, would become the property of this defendant; that the agreement entered upon was legal and that any other arrangement would be against it, and against my conscience and character.

That your orator denies any and all allegations of the said amended bill, wherein fraud, conspiracy or collusion is alleged on the part of the defendant.

And having fully answered all the allegations in the said Amended bill of complainant as this defendant is advised is necessary for her to do, she humbly prays that this suit be dismissed and that the complainant be taxed with the costs of the same.

And further this defendant sayet*y* not.

(Signed) S. B. PALMER,
Solicitor doe *Defendant.*

78 Petronila Particia Rios, being duly sworn upon oath says that she is the defendant herein, that the foregoing answer has been translated to her, and that she knows the contents thereof, and that the same are true as she verily believes.

(Signed) PETRONILA RIOS DE NOYA.

Sworn to and subscribed before me this 26 day of March, 1904.

[SEAL OF NOTARY.]

(Signed) RAF. TIRADO.

79 *Answer of Victor Burset and Santiago R. Palmer in Support of Plea.*

(Filed March 31, 1904.)

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Bill to Cancel Deeds, Etc.

The joint answer of Victor Burset and Santiago R. Palmer defendants, in support of their plea heretofore filed in the same cause, to the bill of complaint of Maria Rios de Rubio, complainant.

These defendants, now and at all times saving and reserving to themselves all benefit and advantage of exception which may be had or taken to the many errors, uncertainties, inconsistencies and other imperfections in said bill of complainant contained, for answer unto so much thereof as they are advised it may be necessary to answer unto in support of their said plea, answering, say:

That they were not parties to, and neither at the time of the conveyance from Manuela Gutman to defendant Burset nor at the time of the conveyance from said defendant Burset to defendant Palmer nor at the present time had or have any knowledge of, any such combination or conspiracy between the defendant Petronila Patricia Rios and the said Manuela Gutman to defraud the complainant as is alleged in said bill of complaint; but upon information and belief aver that no such combination or conspiracy at any time existed, and that the said complainant entered into and executed the alleged private contract or agreement between herself, the defendant Petronila Patricia Rios and the said Manuela Gutman, and thereafter became a party to the proceedings in the District Court of Humacao to obtain a dominion title to their said respective properties as in the petition in said proceedings prayed, freely and voluntarily and
80 with a full and perfect understanding of her rights in the premises and of the object thereby sought.

That upon information and belief they aver that the complainant duly authorized her first attorney, José Maria Cuadra, to represent her in the bringing of said petition for declaration of the title of dominion exactly as he did so; that the said José Maria Cuadra did not defraud or misrepresent the complainant in any way, but followed in all respects her wishes and instructions as expressed to him at the time; and that said Cuadra now has in his possession a letter, written to him by complainant at the time she dismissed him from her employment, acknowledging that he was authorized by her to represent her as he was doing, but that she had changed her mind and did not want to carry out her agreement; and that in said letter is no statement or intimation that said complainant had been cheated or defrauded by any combination or conspiracy into the bringing of said suit.

That at the time the defendant Burset bought said property from said Manuela Gutman he had absolutely no knowledge or information of any charge of fraud ever having been made by the complainant, and depended upon the record title which showed that she had renounced all her rights therein; that he bought it in good faith and for a valuable consideration, to wit: the sum of Forty three thousand three hundred dollars; that defendant Burset exercised no influence, undue or otherwise, over the said Manuela Gutman to induce her to make said sale, but on the contrary said Manuela Gutman was anxious to sell said property as she was intending to go to Spain and could not properly handle the property herself. And defendant Burset denies that he obtained said conveyance for the purpose of defrauding complainant of her alleged rights but alleges that he understood and believed at the time that said Maria Gutman had a good and undisputed title to said property.

That the defendant Burset transferred the title to said property to defendant Palmer without any valuable consideration pass-
81 ing between them for greater convenience in making sale of said property to other parties, as he was desirous to do for his own profit; that, as he was using all his efforts to sell said property and make a profit therefrom, he requested the defendant Palmer to

take the title to said property and hold it for him, Burset, giving him power of attorney to dispose of the same, as he believed that purchasers would buy more readily and have more confidence in his recommendations as to values if he was not himself the record owner; that the defendant Palmer acquired his said title without any knowledge of any of the previous history or proceedings concerning said title or any other knowledge further than that defendant Burset desired him to hold and convey certain property for him; that said Palmer executed a power of attorney to said Burset as soon as the title was transferred, all transactions and negotiations were carried on by said Burset without consultation with Palmer, and the latter had no knowledge of, and paid no attention to the same, acting in the whole transaction merely as a conduit of title.

That the tract of 350 acres, known as "Ramirez" was sold by defendant Burset, under his power of attorney, to the defendants Garzot y Fuertes, who so far as these defendants know had no knowledge or notice of any claim of the complainant, and who paid the full price and consideration of $15,750 therefor, part of which was paid in cash to defendant Burset and the balance in notes, which defendant Burset negotiated for value and which were afterwards paid by said Garzot y Fuertes to the holders thereof.

And these defendants deny any and all manner of unlawful combination and conspiracy with which they are by the said bill charged; without this, that there is any other matter, cause or thing, material for these defendants to make answer unto for the purpose of fully denying any supposed fraud or illegal combination charged
82 therein, and not herein well and sufficiently answered, confessed and avoided, traversed or denied, which is true to the knowledge or belief of these defendants.

All which matters and things these defendants are willing and ready to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

(Signed) RAFAEL LOPEZ LANDRON,
" N. B. K. PETTINGILL,
Solicitors for said Defendants.

UNITED STATES OF AMERICA, *District of Porto Rico:*

Victor Burset, being first duly sworn, says that he has heard read the foregoing answer and knows the contents thereof, and that the matters and things therein set forth and alleged are true.

(Signed) VICTOR BURSET.

Sworn to and subscribed before me this 27th day of March, 1904.

(Signed) ANTONIO DE ALDREY,
[SEAL OF NOTARY.] *Notary Public.*

(Reg'da al número 569.)

83 *Answer of Garzot and Fuertes in Support of Plea.*

(Filed March 28, 1904.)

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Bill to Cancel Deeds, Etc.

The joint and several answer of Juan R. Garzot and Faustino Fuertes, as co-partners under the name of Garzot y Fuertes, in support of their plea heretofore filed in the same cause, to the bill of complaint of Maria Rios de Rubio, the complainant.

These defendants, now and at all times saving and reserving to themselves all benefit and advantage of exception which may be had or taken to the many uncertainties, errors, and insufficiencies of said bill of complaint, for answer unto so much thereof as they are advised it may be necessary to answer unto in support of their plea heretofore filed in said suit, answering, say:

That they and each of them are, and were at the time of their said purchase of the estate known as "Ramirez," consisting of 350 acres, as alleged in said bill of complaint, absolutely ignorant of the alleged fraudulent combination, conspiracy, purposes and actions between the other defendants, as set forth in said bill of complaint; that on or about the 26th day of August, A. D. 1902, these defendants, acting in perfect good faith and without any knowledge, notice or information of any defect in the title of said property held by the defendant Santiago R. Palmer, bought from him the said property "Ramirez" described in said bill of complaint for the sum of $15,750., of which these defendants actually paid in cash to said Palmer
84 at the time of their said purchase the sum of $9,215., as recited in their deed of conveyance, and also delivered to him their certain promissory notes aggregating the sum of $6,535. for the balance of said purchase price; that said Palmer afterwards sold and assigned said notes to Manuel Padin and Cerecedo Hermanos, to whom these defendants have since paid said notes in full.

That at the time of their said purchase of said property "Ramirez" these defendants had the title to said property investigated and depended upon the information received from the Registrar of Property for said District, showing a perfect title to the same in their grantor, and that at said time these defendants had never heard of any allegation or claim being made by the complainant that she had any interest in said property or that she had been deprived of any interest therein through fraud or conspiracy on the part of Manuela Gutman and Petronila Patricia Rios, or anybody else; that they bought said property in entire good faith, without knowledge or notice of any fraud on the part of anybody, and paid a price which represented the full reasonable value of said property; and that they

are ignorant as to the remaining matter of fraud alleged in said bill touching other parties.

And these defendants further say that at the time of their said purchase and of the payment of the purchase money they were ignorant of the alleged fraud in the obtaining of a conveyance of property, including that of these defendants, from the said Manuela Gutman by the defendant Burset without paying any consideration and for the purpose of defrauding complainant out of her share; that they were ignorant of the alleged fraudulent character of the conveyance of the same from defendant Burset to defendant Palmer, or that the latter paid no consideration *of* that he knew of any fraud on the part of Burset.

85 And these defendants deny that they paid no money for said property to said defendant Palmer, that the conveyance to them was made in furtherance of any fraudulent attempt to defeat any title of the complainant to the same or for the purpose of appropriating said land to their own use in fraud of the rights of complainant, or that these defendants knew of the alleged fraudulent purposes of defendant Burset and Palmer and Said Manuela Gutman or of the void and fraudulent character of certain proceedings in the District Court of Humacao, which are set up in the plea of these defendants in this cause, at the time of making their said purchase of said land.

And these defendants further deny that they are insolvent, and they deny that at the time they purchased and paid for said estate "Ramirez" as hereinbefore alleged they knew or were advised that said defendant Palmer, their grantor, had no title to said property and no right to convey the same.

And th*ese* defendants deny any and all manner of unlawful combination and conspiracy with which they are by the said bill charged; without this, that there is any other matter, cause or thing, material for these defendants to make answer unto for the purpose of fully denying the same, and not herein well and sufficiently answered, confessed or avoided, traversed or denied, which is true to the knowledge or belief of these defendants. All which matters and things these defendants are ready to aver, maintain and prove as this honorable court shall direct, and humbly pray to be hence dismissed with their reasonable costs and charges in this behalf sustained.

(Signed) JUAN HERNANDEZ LOPEZ,
" N. B. K. PETTINGILL,
Solicitors for said Defendants.

86 UNITED STATES OF AMERICA, *District of Porto Rico:*

Juan R. Garzot and Faustino Fuertes, being each duly sworn, depose and say, each for himself, that he has heard read the foregoing answer and knows the contents thereof, and that the matters and things therein set forth and alleged are true.

(Signed) FAUSTINO R. FUERTES.

Sworn to and subscribed before me this 24th day of March, 1904.

(Signed) ANTONIO DE ALDREY,
[SEAL OF NOTARY.] *Notary Public.*

Reg'da al numero 567.

87 *Affidavit of Faustino Fuertes.*

(Filed April 5, 1904.)

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

UNITED STATES OF AMERICA, *District of Porto Rico:*

Faustino R. Fuertes, being duly sworn, says that he is one of the firm of Garzot y Fuertes, who are defendants in the above suit; that he has made affidavit to the truth of the answer interposed in said suit in support of their plea of *res judicata;* that said answer was not also sworn to by his said partner Juan R. Garzot because the said Garzot is in Spain and could not be present to make oath to the same; that said Juan R. Garzot went to Spain in the month of October, A. D. 1903, and has not since returned to Porto Rico.

(Signed) FAUSTINO R. FUERTES.

Sworn to and subscribed before me this 5th day of April, 1904.

H. H. SCOVILLE,
By FRANK ANTONSANTI, *Deputy.*

88 Order Book Entry.

Filing of Replications.

(April 2, 1904.)

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Now comes the plaintiff, Maria Rios de Rubio, by her solicitors F. H. Dexter and José Hernandez, and files General Replications to the joint answers of Garzot & Fuertes, and Victor Burset and Santiago R. Palmer, and to the answer of Petronila Patricia Rios de Noya.

89 Journal Entry (Oct. 17, 1904).

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The pleas of the defendants Petronila Patricia Rios, Victor Burset, Santiago Palmer and Garzot y Fuertes are overruled, and said defendants are given until November 15, 1904, to re-answer.

90 In the District Court of the United States for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The Joint and Several Answer of Victor Burset and Santiago R. Palmer, Two of the Defendants to the Bill of Complaint of Maria Rios de Rubio, the Complainant.

These defendants, now and at all times, reserving to themselves all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained for answer thereto or to so much and such parts thereof as these defendants are advised it is material and necessary for them to answer unto, answering say:

That they admit, upon information and belief, that in the year 1875, José María Rios, Sr., died leaving surviving him a widow, Manuela Gutmann, and three children, as alleged in said bill of complaint, and that José María Rios, Jr., one of the said children afterward died intestate before said widow Manuela Gutmann; but these defendants upon information and belief deny that the property left by said José María Rios, Sr., at the time of his death was disposed of lawfully under any power left by him to said Manuela Gutmann, or descended in the manner alleged in said bill of complaint, and aver upon like information and belief that the manner and proportions in which said property should be inherited by said widow and children of José María Rios, Sr., was a constant subject of dispute and litigation between said parties from the time of his said death up to the year 1901, when the private contract referred to in said bill of complaint was signed.

91 Further answering, these defendants, upon information and belief, deny that said private contract was entered into and signed by the complainant in consequence of any misrepresentation, deceit or conspiracy to defraud the complainant by said contract, or that said complainant was induced to enter into said private contract by fraud or conspiracy on the part of her lawyer, José María Cuadra, but believe and so aver that no misrepresentation, deceit or fraud was practiced on said complainant by any person

whatsover touching the execution of said private contract, but that the complainant freely and voluntarily and with a complete knowledge and understanding of the consideration, terms and effects of said contract entered into and executed the same for the purpose of making a final settlement of the controversies which had continually existed among the members of her said family as to their respective rights and interests in the property described in said private agreement, and that the consideration for the execution of said contract moving to the complainant jointly with her sister, Petronila Patricia, was not only the transfer of plantations called "San José de las Mulas" and "Culo Prieto" in which they had hitherto no well defined interest but also the satisfaction of all claims which their mother, Manuela Gutmann, had for her services in the care, custody and management of the properties belonging to the estate of said José María Rios, Sr., during the twenty five years elapsing since the death of the latter; that the value of said two plantations so transferred to complainant and her sister, as aforesaid, was much greater than the value of the properties assigned to their said mother, Manuela Gutmann, by said private agreement; and that said agreement was in all respects favorable and advantageous to the interests of said sisters.

Further answering, these defendants, upon information and belief, deny that the proceedings brought in the District Court of Humacao for the purpose of carrying out the terms of said private agreement and having a dominio title declared in each of
92 the parties to the specific properties assigned to each one of them therein was in pursuance of any fraudulent design to deprive complainant of any of her just rights, or that José María Cuadra who acted as attorney for complainant in the bringing of said proceeding was acting without authority and co-operated and conspired with the other parties in fraud of the complainant, but on the other hand, aver that said proceedings were taken without any fraudulent design for the *bona fide* purpose of obtaining perfect and registerable title for the respective parties to the property belonging to each, and that said José María Cuadra acted for that purpose with the full knowledge and consent of the complainant, and is now in possession of a letter written to him by the complainant at the time she dismissed him from her employment acknowledging that he was duly authorized to represent her as he was doing, but that she had changed her mind as to the advisability of such course of action, which letter contained no suggestion that complainant had been deceived or defrauded in any way.

Further answering, these defendants, upon information and belief, deny that the decree rendered by the District Court of Humacao in said proceeding instituted for the obtaining of a dominio title, as aforesaid, is void and without authority of law, but on the contrary aver that said decree is in all respects valid and binding upon all the parties thereto, as is shown by the action of said Court in refusing to vacate or modify the decree entered by it therein, and by the confirmation of said decree by a judgment of the Supreme Court of Porto Rico under date of June 4, 1902, whereby said decree

of the Court below was declared valid and binding, was affirmed in all respects, and the title thereby decreed to exist in said respective parties was ordered to be duly recorded by the registrar of property.

Further answering, these defendants deny that the conveyance made by Manuela Gutmann to defendant Victor Burset on the 30th day of April 1902 was wrongful or fraudulent, or made for the purpose of defeating any title of the complainant to any part
93 of said property included in said conveyance, or that said conveyance was obtained by defendant Burset by any fraud or undue influence over said Manuela Gutmann exercised either on the part of himself or any other person, but aver that said conveyance was made by said Manuela Gutmann freely and voluntarily and with the sole object of selling and disposing for a valuable consideration of property which the said Manuela Guttmann fully believed to be her own in absolute ownership; that the said Manuela Gutmann was at the time of said sale intending to go to Spain to reside and was on that account anxious to dispose of said property and relieve herself of the risk of placing it in the hands and management of others, not being able to manage it herself as long as she was absent; that defendant Burset bought said property in good faith and for a consideration fully equal to its value, and had at the time of such purchase absolutely no knowledge or information of any charge of fraud ever having been made by complainant as to the acquisition of said property by said Manuela Gutmann; and that the consideration paid by defendant Burset for said property was that mentioned in said deed, to wit, the sum of $43330.00. These defendants further aver that soon after said purchase by defendant Burset and before said Manuela Gutmann could complete her arrangements for her departure to Spain she fell sick and died, her death occurring on or about the 27th day of June, 1902.

Further answering, these defendants deny that the conveyance made by defendant Burset to defendant Palmer as alleged in said bill of complaint was made for the purpose of cheating, wronging and defrauding the complainant, or for any other unlawful purpose, or that either at the time of the purchase by defendant Burset from said Manuela Gutmann, or at the time of said transfer by defendant Burset to defendant Palmer, either of these defendants had any knowledge that the complainant had or claimed to have any right or interest in or to said property, but both of them then verily believed and still believe that the title of said Manuela Gut-
94 mann to said property was a *bona fide* undisputed, and perfect title. These defendants deny that the transfer of said property from defendant Burset to defendant Palmer was made for any purpose of defrauding the complainant but aver that said conveyance was made without any valuable consideration passing between them for the greater convenience resulting in actively endeavoring to sell the same by defendant Burset to other parties as he was anxious to do for his own profit; that defendant Burset requested defendant Palmer to take title to said property and hold it in trust for him, defendant Burset, giving him a power of attorney to dispose of the same, as defendant Burset believed that purchasers

would buy more readily and have more confidence in his recommendation if he himself was not the record owner and purchasers could obtain a deed from a man of prominence in the community such as defendant Palmer.

Defendants further aver that said Palmer took said title without knowledge of any of the previous history or proceeding concerning said property, and without any other knowledge touching the same except that defendant Burset desired him to hold and convey said property for him; that defendant Palmer at the same time executed a power of attorney to defendant Burset and all transactions and negotiations for the sale of said property were carried on by said Burset without consultation with said Palmer, the latter having no knowledge and paying no attention to the same and acting in the whole transaction merely as a conduit of title.

Further answering, these defendants deny that defendant Palmer acting through his attorney, defendant Burset, transferred the plantation known as Ramirez to the defendants Garzot & Fuertes without consideration, but, on the contrary, aver that the full purchase price mentioned in said deed, to wit $15750.00 was paid, the sum of $1000.00 being paid by Garzot & Fuertes to Manuel Padin to whom that amount had been assigned, an additional sum of $1000.00 being paid to Cerecedo Brothers & Co. for a like
95 reason and the balance of $13750.00 being paid in cash to defendants Palmer and Burset, less a small discount for the anticipation of the maturity of the deferred payment; and that, so far as these defendants know or are informed or believe, their co-defendants Garzot & Fuertes at the time of their purchase of said property had no knowledge of any alleged invalidity in the title in defendant Palmer, or of any part of the history of said title except as shown by the records in the registry of property, or any knowledge or notice that the complainant had any claim or interest in said property or had been defrauded thereof in any way.

Further answering, these defendants say that the conveyance executed about the 21st. day of November, 1902, in favor of their co-defendant, Petronila Patricia Rios transferring to her 100 cuerdas of land was not executed for any fraudulent purpose nor without consideration, but that said defendant Petronila Patricia Rios paid the consideration mentioned in said deed, to wit, the sum of $4000.00.

Further answering, these defendants say that the complainant by her proceeding through her Attorney Juan Vias Ochoteco in said suit for the obtaining of a dominio title in the District Court of Humacao, and by her appeal from the decision of said Court therein to the Supreme Court of Porto Rico, by her acceptance of the benefits of the private contract aforesaid and the decrees in the suits aforesaid by taking possession of the said plantations "San José de las Mulas" and "Culo Prieto," and receiving the rents and profits therefrom has become fully estopped in equity and good conscience to question the validity or binding force of said private agreement by bringing suit in this Court or in any other way.

96 And these defendants deny all and all manner of unlawful combination or confederacy wherewith they are by the said bill charged without this that there is any other matter, cause or thing in the complainant's said bill contained material or necessary for these defendants to make answer unto and not hereby well and sufficiently answered, confessed, traversed and avoided, or denied, is true to the knowledge or belief of these defendants; all of which matters and things these defendants are ready to aver, maintain and prove as this honorable Court shall direct, and therefore humbly pray the Court that they may be hence dismissed with their reasonable costs and charges in this behalf sustained.

(Signed) JUAN HERNANDEZ LOPEZ,
" N. B. K. PETTINGILL,
Solicitors for Defendant.

UNITED STATES OF AMERICA, *District of Porto Rico:*

Victor Burset and Santiago R. Palmer, being duly sworn say that they are the defendants in whose behalf the foregoing answer is interposed; that said answer has been translated to them and each for himself says that he knows the contents thereof and that the matters and things therein alleged are true of his own knowledge except as to those matters alleged upon information and belief and those he believes to be true.

(Signed) VICTOR BURSET.
" S. R. PALMER.

Sworn to and subscribed before me this 12 day of November, 1904.

(Signed) JULIO CESAR GONZALEZ,
[SEAL OF NOTARY PUBLIC.] *Notary Public.*

97 *Separate Answer of Petronila Patricia Rios De Noya to the Bill of Complaint of Maria Rios de Rubio, Complainant.*

(Filed Nov. 14, 1904.)

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The separate answer of Petronila Patricia Rios de Noya, one of the defendants to the bill of complaint of Maria Rios de Rubio, complainant.

This defendant, now and at all times reserving to herself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material or necessary for her to answer, answering says:

That she admits that in the year 1875, José María Rios, Sr., died leaving surviving him his widow, Manuela Gutman, and three children, to wit: the complainant, this defendant and José María Rios, Jr., and that said José Maria Rios, Sr., died intestate, but denies that he left a document intended to grant to his said widow, Manuela Gutman, the power to execute a will in his name, but this defendant avers that such power would have been unauthorized by law, and any execution of the same or act done thereunder void and of no effect, and that all the property and estate left by said José Maria Rios, Sr., at the time of his death descended, under the law, to the heirs without any testamentary disposition of the same; and this defendant admits that the description of said properties as stated in said bill of complaint is substantially correct, except as to the value of the same stated therein, which is largely exaggerated.

Further answering, this defendant says that it was always a matter of dispute as to what were the respective interests in said described property inherited by the widow and children of said José
98 María Rios, Sr., and because of such disputes there was constant litigation between said parties from the time of the death of the said José María Rios, Sr., up to the year 1901, and that during said period complainant and this defendant instituted several legal proceedings against their said mother for the purpose of obtaining a judicial determination of their respective interests in said property, but all said litigation during said period of twenty five years or more attained no satisfactory or final result; and thereafter, on the 16th day of January, 1901, the complainant, defendant and the said Manuela Gutman, (the other child, José María Rios, Jr., having, in the meantime, died) entered into a private agreement or contract for the purpose of avoiding litigation among themselves, which said contract was executed by all of the parties thereto on the date aforesaid in the presence of their respective attorneys, to wit, Don Rafael Lopez Landron, in representation of said Manuela Gutman, and Don José María Cuadra, in representation of the said complainant, and this defendant, and that by said contract it was provided, among other things, that all of the parties thereto should refrain from any further litigation touching the property of said José María Rios, Sr.; that the parties had the right to extend said contract by a public instrument before the Notary of Humacao, as soon as he returned from a temporary absence from said city; that the attorneys of the respective parties should proceed to terminate the existing litigation as soon as possible, each one of said parties to be placed in full possession of the property allotted to her or them by said contract, and the titles to said respective properties should be prepared so as to be recorded in the registry of property free from any lien or encumbrance whatever.

By said contract it was further provided that the complainant and this defendant should release to said Manuela Gutmann all their claims whatever the same might be, to all of the lands be-
99 longing to the said estate of José Maria Rios, Sr., in the jurisdiction of Naguabo, except the property called "Culo Prieto," the extent of said properties being stated as approximately

900 cuerdas, of which said Manuela Gutman should remain the sole and exclusive proprietor with full title, and that in consideration thereof the said Manuela Gutman should release and convey to this defendant and the complainant all her right and interest in the estate within the jurisdiction of Humacao, called "San José de las Mulas," with the exception of a tract of forty cuerdas thereof, which had been bought at auction by the Sucesion de Don Miguel Bustelo, the said husband of said Manuela Gutmann, and in the estate "Culo Prieto" in Naguabo. A true copy of this private contract, together with a cor-ect translation thereof into the English language, is hereto attached marked "Exhibit A.," and prayed to be taken as a part of this answer. This defendant says that said private agreement accrued to the mutual advantage of this defendant and the complainant, for the reason that the estate known as "San José de las Mulas," above mentioned, has an extension of over 1400 acres, and has a value much greater than that of all the properties allotted to their said mother by said private agreement, and the intent of said private agreement was to give to each of the parties thereto approximately the same acreage of land.

Further answering, this defendant says that said private contract was entered into on the 16th day of January, 1901, and not on the 16th day of November, 1901, as alleged in said bill of complaint, and this defendant denies that she and her mother, said Manuela Gutman, or any other persons induced the complainant to enter into said private contract by any misrepresentation or deceit, or did fraudulently conspire by the making of said contract to defeat any title of complainant to any of the property therein described, but, on the contrary, this defendant avers that no misrepresentation or deceit was practiced on the said complainant by any persons, but that said complainant freely and voluntarily, and with a complete knowledge and understanding of the consideration, terms and effect of said contract, entered into and executed the same for the purpose of making a final settlement of the controversies which had continually existed as to the respective rights to said properties; that the contents of said private agreement were read over and fully explained to the complainant before she signed the same, and complainant had a full, complete and correct understanding thereof; and that the consideration for the execution of said contract moving to the complainant and this defendant was not only the transfer of the plantations called "San José de las Mulas" and "Culo Prieto" by Manuela Gutman to them, but also the claim which had been made by their mother, Manuela Gutman, for her services in the care, custody and management of the properties belonging to the estate of the said José María Rios, Sr., during the twenty five years elapsing since the death of said Rios, the great difficulty and responsibility of such administration being recognized by both complainant and this defendant in said private agreement.

Further answering, this defendant denies that either she or her mother ever refused to give to the complainant a copy of said private agreement or ever failed and refused to carry out the terms thereof in extending the same by a public instrument before the Notary

Public then having his office in Humacao aforesaid, but, on the contrary, she avers that as soon as said Notary, whose name is Antonio Aldrey, returned to said town of Humacao, the said Manuela Gutman procured him to draw up a public instrument carrying out in due form the terms and conditions of said private contract; that upon the completion of said public instrument the complainant was duly notified that the same was ready for her signature, in
101 accordance with what had been stipulated in said private agreement; that this defendant and her mother Manuela Gutman, were then and there ready and willing to sign said notarial instrument, which had in all respects conformed to and effectuated the terms and meaning of said private contract, but that the complainant herself thereupon refused so sign said notarial instrument, without giving any reason for her refusal, or making any claim that the same failed to agree with and carry out in any respect the terms and conditions of said private contract and has always since persisted in her refusal to sign the same.

Further answering this defendant denies that the proceedings brought by the complainant jointly with this defendant and their said mother, Manuela Gutman, in the District Court of Humacao, in the month of November, 1901, were instituted in pursuance of any fraudulent design to deprive her of any property right, but, on the contrary, this defendant avers that said proceedings were brought in good faith and for the mutual advantage of all the parties thereto; that at said time said properties included within the terms of the private contract aforesaid had no dominio title of record; that they were advised by their attorneys and mutually agreed that such dominio title should be obtained, and that said suit should be brought in the Humacao Court for that purpose. This defendant denies that in the bringing of said proceeding, José María Cuadra, who represented the complainant in said proceeding, acted without her authority or co-operated with their said mother to deprive the complainant of her property without authority of law, or that said José María Cuadra acted in said proceedings without the knowledge of the complainant, but on the contrary, this defendant avers that the complainant had full knowledge of each and every step to be taken and which was taken by said José Maria Cuadra, and duly authorized and approved the same, and, that said José María Cuadra is now in possession of a letter written to him by the com-
102 plainant at the time she dismissed him from her employment acknowledging that he was duly authorized to represent her as he was doing, but that she had changed her mind as to the advisability of such course of action, and that said letter contains no suggestion or intimation that the complainant had been the victim of any misrepresentation or deceit or had been defrauded by any combination or conspiracy.

Further answering, this defendant denies that the decree rendered by the District Court of Humacao in the said proceedings instituted by the complainant, this defendant and their mother, Manuela Gutman, jointly to obtain a dominion title to their respective properties, is now void and without authority of law, but alleges that said

decree is in all respects valid and binding upon all the parties thereto, the best proof of which is that the said Court refused to vacate or modify the same when appealed to for that purpose, as it was, by the complainant represented by Juan Vias Ochoteco as her attorney, and that upon the appeal taken by the complainant from such decree, the same was declared valid and binding and affirmed in all respects by the Supreme Court of Porto Rico by its sentence dated the 4th day of June, 1902, and that by its said decree the said Supreme Court ordered the recording of the title of all of said parties to the respective properties so decreed to them.

Further answering, this defendant avers that since the making of said private contract, the complainant has recognized the efficacy and validity of the said contract by bringing suit in the Municipal Court of the Cathedral of San Juan in October 1901, by her said attorney, Juan Vias Ochoteco, against her mother Manuela Gutman, for the delivery to the complainant of the said plantation called "Culo Prieto," an estate consisting of 300 cuerdas, basing her right upon the private agreement aforesaid, in which suit the delivery prayed for was decreed to be made, and the complainant has since the
103 rendition thereof been receiving and accepting her share of the proceeds of the rental of said plantation "Culo Prieto." That the complainant has further recognized the validity and efficacy of said private contract by taking possession of the said plantation "San José de las Mulas," from which estate the complainant has since the month of June, 1902, been collecting the rents and profits amounting to more than the sum of $200.00 per month, and a suit is now pending in the District Court of Humacao, brought by this defendant against her for the recovery and payment of the one-half part of such rents and profits belonging to this defendant, but which the complainant has retained in her possession and has refused to deliver to this defendant.

Further answering, this defendant denies that the conveyance made by her mother, Manuela Gutman, to the defendant Victor Burset on the 30th day of April 1902, was wrongful or fraudulent or made for the purpose of defeating any title to the complainant in and to any part of said properties, or that said conveyance was obtained by said defendant Burset by any fraud or undue influence over said Manuela Gutman, exercised either on the part of himself or any other person, but that said conveyance was made by said Manuela Gutman freely and voluntarily, and with the sole object of disposing of property which the said Manuela Gutman fully believed to be her own in absolute ownership; that the said Manuela Gutman was at the time of said sale intending to go to Spain, and was on that account anxious to dispose of said property, and relieve herself of the risk of placing it in the hands and management of others during her absence.

Defendant further answering says that she has no personal knowledge as to the payment of the consideration of $43,330.00 as expressed in said deed of conveyance from said Manuela Gutman to the defendant Victor Burset, but upon information and belief alleges that said consideration was *bona fide*, and a part of the same was paid to said Manuela Gutman at the time of said conveyance.

104 Further answering, this defendant admits that on the 21st day of November, 1902, she obtained a deed of conveyance from her co-defendant, Santiago R. Palmer, for one hundred cuerdas of land as described in said bill of complaint for the consideration of $4000.00 but this defendant denies that said conveyance was made with any intention of defrauding the complainant, or any one else, out of any title to any part of said tract of land and denies that the said consideration of $4000.00 was a pretended consideration, or was not, in fact paid; but, on the other hand, avers that said consideration was *bona fide*, and that the same was paid by this defendant to the said defendant Palmer. This defendant denies that she knew at the time of the execution of the said conveyance that Palmer had no right and title to said land and no right to convey the same, but on the contrary she alleges that she then fully believed and still believes that said Palmer had a good title to said land and a perfect right to convey the same; that the title of Manuela Gutman in and to said tract of land, together with other lands, had been decreed to be perfect and entitled to registry by the District Court of Humacao and the Supreme Court of Porto Rico.

That this defendant having entered into an agreement with the complainant and their said mother in perfect good faith, and having on her part fully carried out the same, and knowing of no fraud or conspiracy or deceit practiced by any party in connection therewith, had the right to rely and did rely upon the record title of said property existing in said defendant Palmer, and bought the said tract of land from him in good faith and for a consideration equal to its fair value.

Further answering this defendant avers that the complainant by her proceeding through her attorney Juan Vias Ochoteco in the said suit for the obtaining of the dominio title in the District Court of Humacao, and by her appeal from the decision of the said
105 Court therein to the Supreme Court of Porto Rico, by her acceptance of the benefits of the private contract aforesaid and the decrees in the suit aforesaid in taking possession of the said plantation "San José de las Mulas" and "Culo Prieto" and receiving the rents and profits therefrom, and by her bringing suit against her said mother, Manuela Gutman, to compel compliance on the part of the latter with said private agreement, has become fully estopped in equity and good conscience to question the validity or binding force of the same by bringing suit in this Court or by any other judicial proceeding.

Wherefore, this defendant having fully answered, confessed, traversed and avoided or denied all the matters in said bill of complaint material to be answered, according to her best knowledge and belief, humbly prays this Honorable Court to enter its decree that this defendant be hence dismissed with her reasonable costs and charges in this behalf sustained, and for such other and further relief in the premises as to this Honorable Court may seem meet and in accordance with equity.

(Signed) SANTIAGO R. PALMER,
" N. B. K. PETTINGILL,
Solicitors for Defendant.

106 UNITED STATES OF AMERICA, *District of Porto Rico:*

Petronila Patricia Rios de Noya, being duly sworn, says that she is the defendant in whose behalf the foregoing answer has been interposed; that she has had the same interpreted or translated to her and knows the contents thereof, and that the matters and things therein set forth and alleged are true of her own knowledge except as to those matters alleged upon information and belief, and those she believes to be true.

(Signed) PETRONILA RIOS DE NOYA.

Sworn to and subscribed before me this 12th day of November, 1904.

[SEAL OF NOTARY PUBLIC.]

(Signed) ANTONIO DE ALDREY, *Not.*

(Reg. No. 2120.)

107 *(Translation of Exhibit "A.")*

First. Doña Manuela Gutmann, widow of Bustelo, in her own proper right shall deliver immediately to her daughters by her first marriage, named Doña María Guadalupe Rios, widow of Rubio, and Doña Petronila Patricia Rios de Noya, all the lands and tenements comprised in the planation known as "San José de las Mulas," situated in this jurisdiction, with the exception of a lot of land forty cuerdas in extent belonging now to the Sucesion of her second husband, Mr. Bustelo, and acquired by said Sucesion at a public auction.

Second. In the same manner Señora Gutman shall immediately deliver to the above named daughters of her first marriage the lands which form the estate called "Culo Prieto," in the jurisdiction of Naguabo.

Third. Doña Manuela Gutmann shall retain for herself, and as sole and exclusive owner with all property rights, all of the lands that may be found remaining in the jurisdiction of Naguabo, left at the death of her first husband, Don José Rios y Berrios, or, approximately nine hundred cuerdas.

Fourth. In view of the fact that by this instrument the co-ownership, existing until now, in the heriditary estate left at the death of the intestate Don José Rios y Berrios, becomes finally dissolved, it is by this settlement understood and agreed that each contracting party hereto becomes the exclusive owner of her share without reservation or limitation of any kind.

Fifth. As soon as this settlement shall be signed before witnesses by the contracting parties, without prejudice to its being converted into a public document within the space of forty eight hours following the day of its date, or as soon as the Notary of this town
108 may return to his office, the lawyers of Mrs. Gutman and her daughters shall put a stop to all their mutual Judicial proceedings, not only as to the voluntary suit touching the estate of Don José Rios y Berrios, but also as to all collateral and appellate matters,

Sixth. The lawyers, José María Cuadra and Rafael Lopez Landron, the first representing Doña Maria Guadalupe and Doña Petronila Patricia, and the second representing Doña Manuela Gutman, become hereby obliged to conclude this settlement in a manner which shall carry the same to conclusion without loss of time, so as to leave each interested party in full possession of what belongs to her by this agreement and furnished with their respective titles of property as inscribed in the books of the registry, free from every charge and lien.

Seventh. The expenses of this settlement, that is, the deeds, the expenses of registration, the means of ratifying this settlement before the courts, aside from the fees of the lawyers, shall be to the exclusive account of Doña Manuela Gutman.

Eighth. Moreover, on the occasion of this arrangement, which the interested parties esteem as highly convenient, Doña María and Doña Petronila, find themselves satisfied with the correctness observed by their mother, in the very troublesome duty of preserving so large an estate for the term of so many years, in spite of the very serious difficulties overtaking the estate; the said Mrs. Gutman reserves to herself the right to present to her daughters solemn proof of the honesty with which she has acted up to this day, and a detailed and approved statement of the very grave misfortunes against which the estate has struggled during the long time in which she has administered it.

109 Ninth. Because of her being better acquainted than any other of the interested parties with the claims of all kinds which may now be pending or are to be established in favor of the estate left at the death of Don José María Rios y Berrios, Mrs. Manuela de Gutman is commissioned to continue or begin such reclamacions within the shortest time possible, it being well understood that the amounts obtained from these claims shall be considered into three equal parts for the advantage and use of Mrs. Gutman and her said two daughters by her first husband.

Thus the three contracting parties sign before the witnesses who are present and the lawyers, who likewise subscribe the same as parties thereto, en Humacao this 16th day of January, 1901.

(Signed) MANUELA G., *Widow of Bustelo.*
MARIA RIOS, *Widow of Rubio.*
PETRONILA PATRICIA RIOS DE NOYA.
Lawyer JOSÉ MARIA CUADRA.
Lawyer RAFAEL LOPEZ LANDRON.
FRANCISCO NOYA.
M. ARGUESO.
JESUS ALMIROTY.

110 Filed Nov. 12, 1906.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The Joint Answer of Juan R. Garzot and Faustino R. Fuertes, as Co-partners under the Firm Name of Garzot & Fuertes, Two of the Defendants to the Bill of Complaint of Maria Rios de Rubio, Complainant.

These defendants, now and at all times reserving to themselves all and all manner of benefit of exception or otherwise which can or may be had or taken to the many errors, uncertainties and imperfections in said bill contained, for answer thereto, or to so much and such parts thereof as these defendants are advised it is material or necessary for them to answer, answering say:

That they are and were at the time of the purchase by them of the plantation called "Ramirez" wholly ignorant of each and all of the matters and things alleged in said bill of complaint, except as relates to said purchase of said plantation "Ramirez," but upon information and belief allege that the private agreement entered into on or about the 16th day of January, 1901, between the complainant, her sister Petronila Patricia Rios de Noya and their mother Manuela Gutman, was entered into on the part of said complainant freely and voluntarily and without any misrepresentation or deceit on the part of the other parties thereto, for the purpose of settling family disputes and litigation over the various properties to which all of the parties to said agreement had for many years had conflicting claims; that the validity of said private agreement was afterward contested by the complainant in certain proceedings brought in the District Court of Humacao in the name of all three parties thereto for the purpose of obtaining a
111 dominio title in each one for that part of said properties assigned to her by said private agreement, that the decision in said proceedings was in favor of the validity of said contract as shown by the final decree of said District Court of Humacao therein from which decree the defendant appealed to the Supreme Court of Porto Rico; and that said Supreme Court by its decree of the 4th of June, 1902, affirmed the validity of said private contract and ordered the dominio title of the said Manuela Gutman to that part of the property including said plantation "Ramirez," to be duly recorded in the registry of property of said district in the name of said Manuela Gutman as owner free from all liens and incumbrances of every nature whatsoever.

Further answering these defendants say that at the time of their purchase of the said plantation "Ramirez" as alleged in said bill of complaint these defendants had the titles to said property investigated and purchased the same relying upon the information

then received from the Registrar of Property of said District showing such good and sufficient title in the said Manuela Gutmann which had been transferred as shown by said record by her to the co-defendant, Victor Burset, and by him to co-defendant, Santiago R. Palmer, by good and sufficient deeds of conveyance reciting the payment of full consideration for such conveyances; that at the time of said purchase these defendants had never heard of any claim being made by the complainant or any one on her behalf that she retained any interest in said property or had been deprived of any interest therein through misrepresentation, fraud or conspiracy on the part of said Manuela Gutman and Petronila Patricia Rios de Noya; and that they bought said property from said co-defendant, Santiago R. Palmer in entire good faith, without the knowledge or notice of any fraud on the part of anybody and relying solely upon the registered title which said Palmer possessed.

Further answering, these defendants deny that the consideration of $15,750.00 recited in the deed of conveyance from said Palmer to these defendants as having been paid by them, was
112 in any respect a pretended consideration but on the contrary aver that the said sum was the real and exact consideration paid by these defendants for said plantation, that said sum was the full and reasonable value of the same at the time and that every cent thereof was either paid to the said Palmer through his attorney in fact, the said Victor Burset, or to the parties to whom the deferred payments had been assigned by said Palmer. These defendants aver that said purchase price of $15,750.00 was paid in the following manner, to wit: On the day of the execution of their deed these defendants brought from Naguabo to San Juan the sum of $600.00 in cash, and obtained from the mercantile firm of Mendizabal & Company of San Juan the further sum of $8,615.00, making a total of $9.215.00, which was on the same day paid to the said defendant Palmer; that thereafter the said Palmer assigned to one Manuel Padin an interest amounting to $1,000.00 in the deferred payments due upon said property and another interest of a like amount of $1,000.00 to the firm of Cerecedo Hermanos & Co. both which amounts were paid to said named parties by these defendants on or before the time the same became due under the terms of said conveyance; that these defendants paid to said Palmer at various times small amounts aggregating the sum of $643.34; and that the balance of said deferred payment was paid by these defendants to the said Burset as the agent of the said Palmer before the same became due, the discount thus obtained for anticipation of the payment being the sum of $249.44, and the balance actually paid in cash being the sum of $3,642.22, on M'ch 12, 1903.

Further answering, these defendants say that they were and are ignorant and have no knowledge, information or belief except from the allegations of said bill of complaint, of any alleged fraud in obtaining the conveyance of a certain property, including that so purchased as aforesaid by these defendants by said Victor Burset from

said Manuela Gutman, without paying any consideration
113 and for the alleged purpose of defrauding complainant; that they were and are ignorant in like manner of the alleged fraudulent character of the conveyance of the same property from said Victor Burset to said Santiago R. Palmer, or that the latter paid no consideration for the same, or that the latter knew of any fraud or illegality in his said title; or that the conveyance of said plantation "Ramirez" to these defendants was made in furtherance of any fraudulent attempt or design to defeat any rights or title of complainant in the same or of appropriating said land to their own use in fraud of the rights of complainant. And these defendants deny that they made said purchase in furtherance of any such fraudulent attempt or design, and that these defendants knew of any fraudulent purpose on the part of said Manuela Gutman or of the defendants Burset and Palmer, and that they had any knowledge or notice of the alleged fraudulent and void character of the proceedings in the District Court of Humacao referred to in said bill of complaint.

Further answering, these defendants deny that either at the time they purchased or at the time they made the final payment upon the purchase price of said plantation "Ramirez," they knew or were advised that said defendant Palmer had no valid title to said property and no right to convey the same. These defendants further deny that they are insolvent but on the contrary aver that they are abundantly able not only to pay their debts but to respond to any judgment that may be rendered against them.

Further answering, these defendants say that the complainant should be estopped from alleging the invalidity of the private contract made between herself, the defendant, Petronila Patricia Rios and their mother, Manuela Gutman, for the reason that she has recognized the validity of the same by taking possession of or receiving the rents and profits from the said plantation "San José de las Mulas," and "Culo Prieto"; that since the month of June, 1902,
the complainant has rented out said plantation of "San José
114 de las Mulas," to P. Rodriguez & Company, José María Roldon, Alfonsa Faura and Emilio Faura, and has been receiving as rent therefor more than $200.00 per month and is still receiving and appropriating the same to her own use; and that as these defendants are informed and believe, the complainant brought suit in the municipal court of the Cathedral of San Juan against her mother, Manuela Gutman, demanding the delivery to the complainant of the plantation "Culo Prieto" basing her right upon the terms of the private agreement aforesaid, in which suit delivery was decreed to be made and was made to the complainant, since which time she has been in practical possession of her one-half interest in said plantation and receiving such share of the rents and proceeds thereof.

And these defendants deny all and all manner of unlawful combination and confederacy wherewith they are by the said bill charged, without this, that there is any other matter, cause or thing in the complainant's said bill contained material or necessary for

these defendants to make answer unto and not hereby well and sufficiently answered, confessed, traversed or avoided or denied is true to the knowledge or belief of these defendants; all which matters and things these defendants are ready to aver, maintain and prove as this honorbale Court shall direct, and therefore humbly pray the Court to enter its decree that these defendants be hence dismissed with their reasonable costs and charges in this behalf sustained, and for such other and further relief in the premises as to this honorable Court may seem meet and in accordance with equity.

(Signed) JUAN HERNANDEZ LOPEZ,
" N. B. K. PETTINGILL,
Solicitors for Defendants.

115 UNITED STATES OF AMERICA, *District of Porto Rico:*

Faustino Fuertes, being duly sworn, says that he is a member of the firm of Garzot & Fuertes, the defendants in whose behalf the foregoing answer is interposed; that he has had said answer interpreted or translated to him and knows the contents thereof, and that the matters and things therein set forth and alleged are true of his own knowledge, except as to those matters alleged upon information and belief and those he believes to be true; that his co-defendant and copartner the said Juan R. Garzot is and has been, since the commencement of this suit, absent in Spain, by reason whereof he is unable to sign this answer.

(Signed) FAUSTINO R. FUERTES.

Sworn to and subscribed before me this 12th day of November, 1904.

H. H. SCOVILLE,
Clerk U. S. District Court of Porto Rico,
(Signed) By FRANK ANTONSANTI,
Deputy Clerk.

116 *Supplemental Answer of Garzot & Fuertes.*

In the District Court of the United States for Porto Rico.

Filed Nov. 15, 1904.

Equity. No. 196.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Garzot and Fuertes, an industrial and agricultural society established in the town of Naguabo, under the firm name aforesaid of Garzot & Fuertes, constituted by a public document on the twentieth day of May — executed before the notary don Antonio Aldrey of Humacao, presents this its answer to the bill of complaint filed in

this court by Maria de Rubio (widow) who is a resident of San Juan Porto Rico and a subject of the King of Spain, against Petronila Patricia Rios de Noya, a resident and citizen of Porto Rico and her husband Francisco Noya, a citizen of Porto Rico and residing at Humacao; Victor Burset, a citizen of Porto Rico and a resident of San Juan in said island; Santiago R. Palmer a citizen of Porto Rico and a resident of the city of San Juan and Juan R. Garzot and Faustino Fuertes, composing the aforesaid firm of Garzot and Fuertes: in which said complaint after a great many al-egations of fact she prays this court that said defendants be required to present certain writings and documents expressed therein, and that the same may be canceled and for naught had, and that they be declared to be false and fraudulent in accordance with the rules and practice of the courts of equity in such cases; and that this Court issue an order directed to the Registrar of Property for the district of Humacao ordering the annotation of the *lis pendence* of this suit.

Leaving to one side all the questions referring to the heriditary rights between Doña Manuela Gutman and her children in and to the estate left at the death of Don José Maria Rios, and devoting ou-selves to the question or questions involved in the suit affecting the defendants Garzot and Fuertes, we now state the matters of fact constituting the fundamental grounds of this answer.

There are two questions involved in this suit and which
117 should be considered in determining the same, in so far as concerns the rights of Garzot and Fuertes.

In the first place it should be determined whether or not Equity lies, in determining the relief sought by complainant.

And in the second place it should be resolved as to whether the purchases made by Garzot and Fuertes are valid, void or fraudulent.

Regarding the first question we allege the following:

If the relief prayed for in the Bill is for the nullity of the contracts of purchase—sale made by and between Manuela Gutman, Don Victor Burset, Don Santiago R. Palmer and Garzot and Fuertes, such relief should not be sought in a court of Equity nor according to the Rules established by Equity, but should be sought by virtue of an action, of nullity, in accordance with the clear and precise articles of the Civil Code of Porto Rico.

Thus all the questions contained in the Bill of Complaint, are all defined in the Civil Code of Porto Rico, that is to say, treating of acts and contracts originating and regulated in accordance with the articles of the Civil Code, which constitutes, therefore the only legislation applicable to the case; it defines the rights of the parties and determin-s their reciprocal *ab*bligations, as well as to determine the validity of the acts and contracts effected, and their legal consequences and effects of every description.

The essential requisites of a contract as determined by article 1228, of the aforesaid Civil Code, are:—1st, The consent of the contracting parties; 2nd, A definite object which may be the subject of the Contract; and 3rd, The cause for the obligation which may be established.

Put not withstanding the fact that all the requisites established in article 1228 are complied with, they may be annul-ed whenever

they contain any of the defects which invalidate them according to law. These defects are, intimidation or violence, error or
118 deceit, falsity of the thing and others.

Articles 1268 and 1269 of the Civil Code allow the bringing of an action for nullity, by reasons of the defects stated shall last four years and may be brought by those who are principally or subsidiar-ly obligated by virtue thereof.

Therefore, if the Complainant in her Bill of Complaint considers the acts and contracts mencioned therein have been subject to error, deceit or falsity, she should have her cause of action in accordance with articles 1267, 1268, 1269 etc. etc., of the Civil Code of Porto Rico.

In order to establish her cause of action the Complainant has been and is yet withing time, to wit, four years as prescribed by law, the first contract and the one from which the others originated was executed on the sixteenth day of January in the year nineteen hundred and one, therefore the four years have not as yet elapsed.

For the e-fects of this suit in so far as refers to these defenda-ts it should be considered that the relief prayed for in the Bill of Complaint cannot be granted until all the acts and contracts be declared null upon the Registry of Property.

It is true that the inscriptions in the Registry of Property do not validate contracts which are null and void according to law, but this proves and confirms the fact that the Complainant wishes to establish her claim, she has mistaken the course to take by invoking Equity which is an extraordinary remedy, when she had and has a complete and full remedy at law, completely defined, in order to establish her pretended rights.

It is material to these defendants, and account should be taken of their good faith, considering the original fundaments of this suit rose out of w-itten agreement entered into on the sixteenth day of January nineteen hundred and one, by and between Doña Manuela Gutman widow of Bustelo, Doña Maria Guadalupe Rios widow of Rubio and Doña Petronila Patricia Rios de Noya, and by vir-
119 tue of which Doña Manuela Gutman acquired all the lands, of which these defendants later purchased a part.

This valid and sufficient agreement, in accordance with the prescriptions of the Civil Code, served as a basis for the contracting parties to apply to the District Court of Humacao for an *"expediente de dominio"* title of ownership, and which court in its judgment or opinion ordered that the properties therein mentioned be inscribed in the Registry of Property in the same manner and in accordance with the agreement presented; and which said judgment or opinion was later confirmed by the Supreme Court of Porto Rico.

Afterward Doña Manuela Gutman transferred to Don Victor Burset the ownership of the lands which she had acquired by virtue of the agreement aforesaid; which transfer was duly recorded in the Registry of Property.

Later Don Victor Burset transfer-ed to Don Santiago R. Palmer, the said lands by virtue of a written document of purchase-sale executed according to law, which said contract was duly recorded in the Registry of Property.

And afterwards, to wit, on the twenty sixty day of August one thousand nine hundred and two by a public document executed before Notary Don Herminio Diaz Navarro and recorded in the Registry of Property, these defendants the said Agricultural and industrial company purchased from Don Santiago R. Palmer a tract of land called "Cercado Ramirez" composed of three hundred and fifty cuerdas, and five hundred and thirty five one thousandths of another, equivalent to thirty seven hectares and seventy seven ares of land in its greater part, first class, in the ward "barrio" of Rio-abajo, bounding on the north with lands of Don Juan Busó, on the East with Don José Perez Villamil, today with Don Prudencio Barrida, there being a ditch between and formerly belonging to Don Francisco Busó, with lands of Don Juan R. Garzot and Don Ramón P. Villamil, formerly Don Francisco Buzó up to near where the Rio Blanco empties; on the south by the river Blanco, which separates it
1:0 from lands belonging to Don José del Carmen Borge and Don Prudencio Barriola and from the farm called "del lugar de los puentes," belonging to Doña Manuela Gutman widow of Bustelo, and on the West by the Rio Blanco which separates it from the farm called "Madam Duran," also belonging to Doña Manuela Gutman and from lands belonging to the heirs of Don Ramon Argueso, formerly belonging to Don Pedro Lebron and also with part of the branch of the River called "Viejo," which separates it from the farm called "Cercado del Islote" also known as "Rivalta" belonging to Doña Manuela Gutman, containing a house made of native timber in bad condition.

This sale was effected for the price of fifteen thousand seven hundred and fifty dollars, which was the amount that both of the contracting parties valued the farm and said sum was agreed and paid in the following manner:—the defendants paid at the time of the signing of the contract the sum of nine thousand two hundred and fifteen dollars to Don Santiago R. Palmer, who received the said sum and gave receipt therefor, and the balance of six thousand five hundred and thirty five dollars, the defendants agreed to pay within one year without interest from the date of the sale or on the twenty sixth day of August 1903.

In order to guarantee the said sum of six thousand five hundred and thirty five dollars these defendants, Garzot and Fuertes constituted and gave a voluntary mortgage upon the farm, and a further sum of one thousand dollars for costs, the said farm to remain so mortgaged until these defendants, Garzot and Fuertes should pay the amount thereof, that is to say, the balance of the purchase price.

And these defendants state that the payment of the nine thousand two hundred and fifteen dollars at the time of the purchase by them in its greater part was made through the house of Mendizabal and Company and this they are ready to prove.

The amount of the mortgage which these defendants owed amounting to six thousand five hundred and thirty five dol-
121 lars, was paid off in the following manner: on the 12th day of March 1903, these defendants, Garzot and Fuertes, delivered to the grantor the sum of three thousand six hundred and

forty two dollars and twenty two cents, and in various other occasions the sum of six hundred and forty three dollars and thirty four cents.

Don Santiago R. Palmer the grantor had obtained as a loan from Messrs. Cerecedo Brothers and Company and Don Manuel Padin y Otero the sum of two thousand dollars, that is to say one thousand dollars from each, and as a guaranty for this sum he mortgaged the mortgage of these defendants which was for the fulfillment of the payment of the balance of the purchase price of the lands "Cercado Ramirez" which these defendants had acquired.

And these defendants say that later they paid to Messrs. Cerecedo Brothers and Company and to Don Manuel Padin y Otero the said two thousand dollars, clearing and cancelling the said mortgage and obtaining from said creditors receipts for said amounts which were duly recorded in the Registry of Property.

This sum of two thousand dollars added to the sum of two hundred and forty nine dollars and forty four cents as a benefit of the mortgage discounts make a total of the price paid by these defendants, Garzot and Fuertes of the farm "Cercado Ramirez."

When the total price was paid, the grantor by and through his general attorney in fact, gave to these defendants, Garzot and Fuertes a receipt and a cancellation of the mortgage for the balance of the purchase price, as is shown by the deed executed by said parties before Don Jacinto Texidor y Alcalá del Olmo a notary on the eleventh day of March 1903.

And these defendants, Garzot and Fuertes, state that this has been the real and true manner in which they purchased the farm "Cercado Ramirez" and with the only motive in view that they thought it a good business transaction, and without any other papers than the documents referred to, that is to say, having accepted the propositions of sale made to them, and having realized the
122 negotiation according to the conditions and terms herein mentioned.

And these defendants state that before closing the deal of the purchase, they did what was correct and proper under the circumstances. These defendants investigated the Registry of Property of Humacao to ascertain the vendor's rights, finding that such rights were recorded in accordance with the Mortgage Law, that is to say in accordance with all the requisites and solemnities required by law, and under the guaranty and certificates of the Notary's who had executed and authorized the public deeds wherein the rigths of the vendors appeared.

And these defendants further state that they consulted with Cou-selors, who were known to them and who were competent, regarding the inscriptions appearing in the Registry of Property in favor of the grantor and their privies; and with all these precautions and under the protection of the laws regulating the right of real property and their inscription in the Registry, they proce-ded, as aforesaid stated, to purchase the farm "Cercado Ramirez" paying therefor the sum already mentioned, and which can be proved if

necessary; in this manner carrying into effect a valid negotiation, with the best possible faith.

And these defendants further state, that they absolutely deny each and all the allegations contained in the Complainant's Bill of Complaint whereby it is alleged that they used deceit and fraud in order to deprive complainant of her pretended or supposed rights as a matter of fact these defendants have done nothing more than to really and positively purchase from a person whom they thought had the right to sell, and thus it clearly appeared in the Registry of Property.

Therefore, these defendants, Garzot and Fuertes absolutely deny each and every allegation contained in the Bill of Complaint herein, except as herein confessed, and pray this Honorable Court
123 to dismiss the complainants' said Bill of Complaint awarding these defendants their costs most wrongfully sustained, and they will ever pray.

(Signed) JUAN HERNANDEZ LOPEZ,
Of Counsel for Garzot & Fuertes.

Faustino Fuertes, being duly sworn deposes and says that he is a member of the firm of Garzot and Fuertes, that he has heard read the foregoing Answer, and that the contents thereof is true except as to those matters stated on information and belief and that as to those matters he believes them to be true.

(Signed) FAUSTINO R. FUERTES.

Sworn to and subscribed before me this 15 day of November 1904.

H. E. SCOVILLE, *Clerk*,
(Signed) By FRANK ANTONSANTI, *Deputy*.

124 Order Book Entry (March 13, 1905).

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Now comes the complainant, by her solicitor F. H. Dexter and files a replication to the joint answer of Juan R. Garzot and Faustino R. Fuertes as co-partners of Garzot & Fuertes; a replication to the joint answer of Victor Burset and Santiago R. Palmer; and a replication to the separate answer of Petronila Patricia Rios de Noya.

125 Journal Entry (April 3, 1905.)

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Now comes Frank Antonsanti, solicitor for Doña Petronila Patricia Rios and files a medical certificate of her illness. Whereupon

comes Robert H. Todd, a special examiner to take the deposition of Patricia Algarin and files said deposition. Thereupon the taking of testimony orally before the Court in this cause is begun.

126 In the District Court of the United States for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Testimony Taken Before the Court.

Upon motion of the complainant that Attorney Rafael Lopez Landron be put under the rule and excluded from the room together with the other witnesses during the progress of the trial, the Court ruled that Attorney Landron must withdraw either as Counsel or as a witness; to which ruling of the Court defendants excepted and Mr. Landron retired from the case as Counsel.

Mr. DEXTER: Complainant offers in evidence the will executed by Doña Manuela Gutman in behalf of Don José Rios y Berrios, her first husband, dated the 12th day of September, 1875, in his name, under the power of attorney therein set forth together with a certified translation thereof, to show the death of the ancestor under whom all the parties claim, the designation of heirs and the manner in which the property was devised.

Mr. Pettingill reads portion of same to the Court. It is an instrument dictated to a man at his bedside and four days afterwards his wife makes a will. It is objected to as an illegal instrument having no force or effect under any law.

Mr. DEXTER: It is offered as a legal instrument executed in accordance with the laws of the land at the time it was executed. Cites Gutierre: Law 7, Title 5, Book 3, containing collection of former laws of Spain prior to the adoption of the Code of 1889.

The COURT: The objection is overruled.

Mr. PETTINGILL: Note an exception.

Mr. Dexter then read the document to the Court and it was marked: Exhibit "A" for the complainant.

127 EXHIBIT "A" FOR COMPLAINANT.

No. 232.

Nuncupative Will.—Through an Attorney in Fact.

In the town of Humacao on the 12th day of the month of September of the year 1875 before me Don José Celestino Schrodder, licensed notary of the College of Porto Rico with residence in this town during the absence of the regular notary, and the witnesses called for *for* this act hereinafter mentioned, there appearing in his dwelling house where I went at his request, the lady Dona Manuela

de Gutman de Rios, widow, 30 years old, of this vicinity, and registered in the barrio of San Francisco, according to the cedula of residence, issued under number thirty seven on the 9th instant, and which she exhibits to me and I return to her, who after assuring me that she is in the full enjoyment of her civil rights and with the necessary legal capacity for the execution of this deed, stated:

That her legitimate husband Don José Rios, deceased, executed in her favor a deed of power of attorney to make a will in this town, on the night of the 8th day of the present month before the undersigned, the original copy of which she delivered to me to execute this testament, and to include therein its insertions which I attach to the roll of originals of this protocol under number ninety one, the literal tenor of which is as follows:

In the town of Humacao, Province of Porto Rico, in the night of the 8th day of September of 1875, before me Don José Celestino Schrodder, notary of the Territorial College of the Province, licensed for the exercise of his profession in this town, and the witnesses called for, there appeared Don José Rios y Berrios, resident and native of this place, legitimate son of Don José María Rios, de-
128 ceased, and Doña Petronila Berrios, a Roman Apostolic Catholic, land-owner, being in his dwelling house, where I went for that purpose, he being ill in bed with malignant smallpox, but in his full judgment, memory and natural intellect, of which facts, and of his acquaintance, profession and residence I certify, and he stated as follows:

First: That his serious condition of health does not permit him to attend with the necessary repose and brightness to execute his will, and having full confidence in the good judgment, upright conduct and intelligence of his legitimate wife Doña Manuela de Gutman, and who shall execute it efficiently because of having informed her beforehand of all his wishes, he has decided to authorize her to that effect. In consequence whereof he does hereby give, and confer upon his said wife the most ample, firm and efficient powers that may be required by law and may be necessary in order that in the event of the death of the grantor within or after the legal period, to execute his last will or testament, and to make the legacies, bequests, declarations, discharges of conscience, and others of which she has been instructed, as he approves all that in accordance with said power she should make, it being his will that the same should have the same validity and force as if it were literally expressed in this instrument, and also that there should be included therein the dispositions hereby reserved as follows:

He commends his soul to God and his body to the earth of which it was formed, which once being dead shall be clothed as it may be ordered by the Parish, to which trust he leaves everything that may be necessary, as well as the funerals and prayers. Do. He
129 hereby requests that there should be bequeathed the religious obligatory and pious fund the ordinary alms. Do. He orders to be declared that they are lawfully married according to the Roman Catholic Apostolic Rite, of which marriage they had

and have to-day the children Guadalupe Josefa Petronila, José María, Juan de la Cruz, y Patricia Petronila Manuela, all minors, whereby and using the powers conferred upon him by the law elects and appoints his said wife tutor and curator of their persons and properties, relieving her from bond, the pension to be paid in products, for the reason of his conviction in the good upright conduct, zeal and tact required and that she will take care of his said children. Do. He requires that a declaration of the properties, debts and assets be made by the grantee of the power of attorney who knows their importance and condition. Do. He orders that there should be appointed as his executors in the first place, the said Doña Manuela Gutman, and in the second place Don Domingo Ramirez, appointing the former accounting partitioner, and proceeding to institute the testamentary proceedings extra-judicially and in accordance with the law of civil procedure. Do. He does hereby request that from the net remainder of all his properties, rights and actions there should be instituted as he does hereby institute as his only heirs the said legitimate children Doña María Guadalupe, Josefa Petronila, Don José María, Juan de la Cruz, and Doña Patricia Petronila Manuela, so that they may hold them and enjoy them with the benediction of God.

Second: And finally he repeals and annuls all the former dispositions that he has heretofore made in writing and orally so that none should have any force nor make proof judicially or extra-judicially, except the power to will and the nuncupative will
130 made in virtue thereof, which he wants and orders to be observed and fulfilled as his last deliberate will, and in the manner and form most in accordance with law. In testimony whereof he does execute it and does not sign it because of his inability to do so, he requested that it should be signed by the witness Doctor in Medicine and Surgery Don Genaro Almodova, who was a witness with those present Don Pablo Font and Don Joaquin Castany, physicians, to whom and to the grantor I have fully read this power because they requested me to do so, after informing them of the right they had to do it personally, and which persons, profession and residence I know, of all of which I give faith. At the request of the testator and as a witness.

(Signed) GENARO ALMODOVA.

I was a witness.

(Signed) PABLO FONT Y MARTELO.

I was a witness.

JOAQUIN CASTANY MASFERRER.

(Signed) JOSÉ CELESTINO SCHRODDER.

The inserted power corresponds with its original to which I refer, and this party assuring me that the same has not been suspended, repealed nor limited, that she has accepted the same, and using the powers therein conferred and accepting it anew, she stated: That

the said legitimate husband Don José Rios y Berrios died on the 8th instant under the foregoing power, and in compliance with his request therein made communicated to her, his body was buried in the cemetery of this Parish without having celebrated yet the funerals by reason of the epidemic condition in which this town is, and of having died from malignant smallpox in the opinion of the physicians.

First. It was his will, and he so requested the party that there should be paid to the religious obligatory and pious fund the customary alms for the purpose for which it was applied by the royal cedula of 1825.

Second. He requested her to declare, as she does hereby
131 do it, that his marriage with the stating party was celebrated in accordance with the Rite of the Roman Catholic Church in the year 1866, of which marriage they had and have at present as their legitimate children Doña María Guadalupe Josefa Petronila, Don José María Juan de la Cruz, and Doña Patricia Petronila Manuela, of whom the aforesaid power is fixed, and who were instituted by him his sole and universal heirs, providing that for their tutorship and curatorship without bond, and products in payment of the pension there should be elected the stating party; and in compliance with this order she is hereby elected as such praying the judge to whom a copy of this clause may be presented that he would confer upon her said trust without the bond and with the payment as aforesaid.

Third. He conferred power upon this party to declare that at the time of contracting matrimony with his said wife, both were in possession of certain properties acquired by them, amounting those belonging to the stating party to the sum of eight thousand pesos and those of the deceased to four thousand, consisting of jewelry, money and other objects; that afterwards, that is in the year 1871, died the person from whom her husband claimed Señor Don José María Rios, leaving very valuable property, and her said deceased grantor Don José Rios y Berrios being the heir in part for various causes; that in consequence of the universal proceedings he acquired the property mentioned in his deed of adjudication, above mentioned, which properties have increased during the administration of her said husband, which properties appear, some of them in the deed of adjudication, and others in memorandum on books existing in possession of the stating party and her representatives Don Domingo Ramirez and Don Emeterio Colon.

Fourth. In the same manner he conferred power upon me that by reason of his having been the general administrator of the properties of his legitimate mother Doña Petronila Berrios the
132 accounts of one and the other have been intermingled that although the books will show the amount and liquidation of each one, it was his will that after his death his testamentary proceedings should be instituted making the liquidation and partition of both estates, in order to be able to know and estimate their importance, surveying the properties of his children and those of the stating party acquired as conjugal property, avoiding litigation,

misunderstanding and losses. In consequence whereof and obeying his said will she does hereby order that the same should be respected by the parties in interest.

Fifth. He wanted and especially ordered the said grantor to declare, and she does hereby do it, that her deceased husband Don José Rios y Berrios, in defense of the administrative interests had maintained some suits, and other suits also to protect her own interests, mentioning of the former the one instituted by Don Manuel Toro Quiñones which had been settled by agreement for the sum of three thousand five hundred pesos and costs, the attorney Don Leandro Aponte, being in possession of the basis, clauses and agreement to carry the same into effect; therefore that after his death said agreement should be ratified in all its parts and shall be literally complied with by his heirs, that the costs should be paid and that the same should be filed *in perpetuum memoriam*. In virtue whereof this party carrying out the wishes of her said husband she does declare it so.

Sixth. It was the will and it was so ordered by the grantor of the power of attorney that this party should declare that although it was true that the universal testamentary proceedings of his excellency Don José María Rios had terminated it was still pending for the liquidation of costs, having received the deed of de-
133 duction; that on account of the rights and fees accruing in the appraisement, he had paid those sums of money keeping in his possession the vouchers from each party; whereof it was his will that after his death a liquidation should be made thereof paying those which remained unpaid. This party in compliance with his will she does hereby declare it for the corresponding legal effects.

Seventh. It was his will and he thus stated it to this party that having instituted a suit in this court against Don Adrian D. Duffaut, which was ended by final judgment, which decision he had complied with, it only remaining pending the payment of costs, but that as a result of that suit, the said Duffaut was indebted to him in the sum of $300 (pesos) which was the amount of the sale of some oxen, all of which appears from the record, in virtue whereof this party does hereby declare it so to the effects aforesaid.

Eighth. This party was requested to declare that her said husband Don José Rios y Berrios had entered into with the other coheirs of his deceased father Don José María into a certain agreement of settlement and sale of some of the properties which would be afterwards adjudicated to him in his testamentary proceedings, which settlement appears in the following deed executed before the notary Don Eugenio de Torres; that in said deed certain penalties had been provided for the violation of any of its articles, and although afterwards, when the importance of his inheritance became known a certain deed before the same notary, it was his will, that said settlement should be literally complied with as well as all the acts derived therefrom. This party in compliance with said request does hereby declare it so.

Ninth. It was also ordered and requested by him to this party to

state, that from the hereditary portions adjudicated to the
134 co-heirs of his excellency Don José María Rios, acquired by her deceased husband and referred to in the preceding clause, some of them such as his excellency Don Antonio Soler and Doña Avelina Rios de Faura, still remain unpaid as well as those of the former regarding certain amounts, both appearing in some memoranda, books, drafts and other papers determined in the same, either in regards to the capital or to the interest; and it was his will that the liquidation should be made immediately, that real properties should be sold necessary to pay said due installments, that their amount should be fixed in order to avoid troubles, doubts and losses in the assets which might correspond to his children. And in compliance therewith she does hereby so order it.

Tenth. She was requested to declare that after the account of the administration of the estate appearing in the record, her said husband contracted some loans for the running of the plantation and properties belonging to Doña Petronila Berrios, some of them by documents, some under his signature and others in open account with the commercial houses of this island; and it was his will that after his death a separation and acknowledgement should be made, each party paying those corresponding to him. In compliance with his request she does hereby so request it.

Eleventh. It was his will that it should be declared, and she does hereby do it, that in co-formity with the other co-heirs of his excellency Don José María Rios, they had agreed to commission his excellency Don Antonio Soler to collect all the liquidated claims appearing in his testamentary proceeding and adjudicated in part to said co-heirs, giving him five per centum and other fees referred to in the deed executed before the notary Don Eugenio de
135 Torres; that having deserved the confidence of said Soler, it was his will that after his death he should continue with the same charge under the same conditions, that said acts should be ratified by the parties in interest executing to him all the required documents so that he may continue in the commission that he has so efficiently undertaken.

Twelfth. He ordered that it should be declared, as she does hereby do it, that in the properties which he has and possessed in the jurisdiction of Naguabo, he undertook and still continues in the cattle business with the neighboring islands, which business is in charge of Don Domingo Ramirez; that with the object of carrying on the same successfully he contracted some loans in the course of the business aforesaid which appeared in his notes and which are familiar to said Ramirez who has full notes of the animals acquired, from whom, terms of the purchase, dates of payment, dates of embarcation, manner and form in which they were sold, conditions for the payment thereof, and persons residing in the island who are indebted to him; he especially requested that after his death his business should be discontinued definitely until the liquidation and payment of all his debts; and as regards the part which belongs to the minors it is prohibited to the tutor and curator to make any nego-

tiation which might affect their capital, that in case of their continuance the same should be of her own exclusive account.

Thirteenth. He ordered that it should be declared, as she does hereby do it, that having gone as security and principal debtor for Don Cristóbal Patxot in a sum that he borrowed from Doctor Genaro Almodova, the said Patxot having failed to pay upon maturity he was obliged to contract some debts with the former, becoming directly indebted to the former, all of which appears in public
136 documents and in consequence thereof in the record of the executive action that he instituted against the said Patxot. Wherefore he ordered that this matter should be brought to an end by all the legal means, either by paying its amount or by collecting the same from the debtor.

Fourteenth. He requested this party and for that reason she does hereby do it, that the declaration of all his properties, personal and real, rights and actions, should be made by his wife, this stating party, either by reason of the knowledge that she has of them, either by reason of the account thereof that she must require from each one of the tenants, and once it is fixed and adjusted by her the same should — held as valid and legal without contradiction or replication *form* any person.

Fifteenth. He ordered this party that she should come to an understanding in order to assist her in the administration and liquidation of the estate with Don Emeterio Colóm, who deserved his entire confidence, and who at the same time knew part of the real properties possessed by him, and in compliance with said request she does hereby state it to the corresponding effects.

Sixteenth. In order to provide that this party should not be deprived of the necessary means to continue the living in the manner that she was accustomed to, having into consideration the condition in which this country is, he requested and ordered her to dispose, as she does hereby do it, that from the liquidation and partition of his properties, in the event that there should not be any conjugal properties there should be applied to her the marital portion in conformity with the laws in force.

Seventeenth. It was the will of the grantor that his testa-
137 mentary proceedings should be made extra-judicially, submitting all the operations of inventory, appraisement and account of partition and sub-partition to the judicial approval and that the same should be made a matter of record in the Registry of the Notary of this town; wherefore this party in compliance of his will she does hereby order it.

Eighteenth. It was also the will of the grantor to revoke, as he did revoke, all the testaments and other dispositions that up to this time he had executed in writing, by word or in any other manner, so that neither should have any validity, excepting the power herein inserted, and everything that was declared by him in virtue thereof; wherefore, and in compliance with his will, she does hereby do it.

In testimony whereof she does execute and sign it together with the witnesses who were present and residents Don Serafin Noya, Don Fernando Hernandez, Merchants, and Don Juan Erzola, laborer, to

whom and to this party he read fully this testament because they so desired, after being informed of the right they had to read it personally, and which persons professions and residents I know, to all of which I certify.

MANUELA DE GUTMAN DE RIOS.

Witness:
SERAFIN NOYA.

Witness:
FERNANDO HERNANDEZ.

Witness:
JUAN ERZOLA.
(Signed) JOSÉ CELESTINO SCHRODDER.

I, Don Antonio de Aldrey y Montolio, resident and notary of the city of Humacao, island of Porto Rico, certify: that the foregoing copy corresponds well and faithfully with the original of its contents on file in the archives of this notarial office in my charge, to which I refer. In faith whereof and at the request of Doña María Rios I issue the present copy, that I sign, subscribe and rubricate in four sheets of notarial paper of my own use affixing thereto
138 fifty cent stamps as it is provided by the Bill Hollander, and taking note of this issuance in Humacao on the 31st of March, 1905.—Stricken—María.—her.—Not valid.

Signed ANTONIO DE ALDREY, *Notary.*

There is a mark of the notary; there is a revenue of fifty cents, partly covered with the seal of the notary.
(Signed) M. S. GEIGEL,
Int. U. S. Court.

139 Witness: MARIA RIOS VIUDA DE RUBIO.

Direct examination. Interpreted.

(By Mr. DEXTER:)

Q. State your name in full, please.
Ans. Maria Rios Viuda de Rubio.
Q. You are the complainant in this case?
Ans. Yes, sir.
Q. Who was your father?
Ans. Don José Rios y Berrios.
Q. When your father died how many children did he leave?
Ans. Three.
Q. Who were they?
Ans. Petronila Patricia and Manuela.
Q. She is generally known by the name of Petronila de Noya, is she not?
Ans. Yes, sir.
Q. And she is one of the defendants in this case?
Ans. Yes, sir.

Q. And did your father leave at the time of his death any other children besides yourself and Doña Manuela?
Ans. Yes, sir.
Q. What was his name?
Ans. José Maria Rios.
Q. Did José Maria Rios, your brother, die?
Ans. Yes, sir; he died.
Q. In what year?
Ans. November 7, 1887.
Q. Did your mother Doña Manuela Gutman marry a second time?
Ans. Yes, sir.
Q. Do you recollect approximately what year that was?
Ans. I do not remember.
Q. Do you recollect whether it was before or after your brother José died?
Ans. Before.
Q. Did your brother leave a will?
Ans. No, sir.
Q. He died without a will?
Ans. Yes, sir; he was 14 years of age; he was a minor.
Q. Whom did your mother Doña Manuela marry?
Ans. Mr. Miguel Bustelo.
Q. After the death of your father and up to the time of the marriage of your mother Doña Manuela, where did you live?
Ans. At Humacao.
Q. With whom?
Ans. With my mother.
Q. Did you continue to live with her after her marriage to Bustelo?
Ans. Yes, sir; but there was a time when we lived with an aunt of ours.
140 Q. When did you marry?
Ans. October 9, '99.
Q. Has your husband died, and if so, in what year?
Ans. Yes, sir; he died April 2, 1900.
Q. Are you certain about that date of your marriage in 1899?
Ans. I remember now it was in '91.
Q. In 1891?
Ans. Yes, sir.
Q. When did your husband die?
Ans. April 2, 1899. I remember now.
Q. And after your husband died, whom did you live with, if anybody?
Ans. All by myself with my three children.
Q. How many children have you?
Ans. Three.
Q. You have not married again the second time?
Ans. No, sir.
Q. From the time your husband died in the year 1899 and up to the time of your mother's death, what were the relations between you and your mother?

Ans. We were on good terms.

Q. What were the relations between you and your mother's second family, the Bustelo family?

Ans. Rather cold.

Q. Now can you explain what brought about that state of affairs?

Ans. On account of financial affairs due to these testamentary proceedings that I requested.

Q. At the time of the death of your brother, did you claim any right or interest in his estate or in the estate of your father?

Ans. The whole thing I asked for was that a testamentary proceeding be made because I knew that the property of my brother was a reserved estate.

Q. What right or interest did you claim in the property or interest of your brother?

Ans. I didn't claim anything. I asked that testamentary proceedings be made and that a division of the property should be made since I believed that I was entitled to that.

145 Q. Whom did you claim that that property should be divided between or among?

Ans. Between my sister and myself.

Q. Did you appear or participate in the testamentary proceedings of your father's estate?

Ans. No, sir; I did not appear because the proceedings were started, and, inasmuch as they were suspended, I did not have a chance to appear.

Q. I don't mean whether you personally appeared, but did you appear by an attorney or anybody else?

Ans. At the beginning of the proceedings, Mr. José Maria Cuadra represented me.

Q. Do you recollect how long that was before this question of a private contract came up, more or less?

Ans. I am not sure, but I think it was in 1900. I am not sure as to dates.

Q. What employment, if any, did you make of the lawyer José Maria Cuadra; for what purpose did you employ him?

Ans. For the purpose that the testamentary proceedings should be carried out in order that the property or estate should be divided up.

Q. Divided up between whom?

Ans. Between my sister, my mother and myself and the share corresponding to my mother in usufruct.

Q. (The last question was repeated to the witness by the Interpreter.)

Ans. Between my sister and myself because the property was reserved property.

Q. Did you employ him for any other purpose?

Ans. No, sir; only for that purpose.

Q. (Showing witness a document). Please look at that document, Doña Maria, read it carefully and state whether you recollect having signed that document before, not that particular document but the one of which that is a copy.

Ans. (Witness reads the document.)

Q. Do you recollect such a document?

Ans. Yes, sir; I remember a few days after I signed it, because a copy was taken to me.

Mr. DEXTER: Plaintiff offers in evidence a duly certified copy of the contract which bears date of January 16, 1901, and the translation thereof which is attached to the separate answer of Petronila Patricia Rios. It is offered for the purpose of showing that it was executed under fraudulent misrepresentation and under duress.

Mr. PETTINGILL: No objection.

(The contract was then read to the jury and marked Exhibit B for the Complainant.)

141 EXHIBIT "B" FOR COMPLAINANT.

I, José R. Aponte Riera, Secretary of the District Court of Humacao certify:

That in the proceedings for declaration of dominion of several rural estates instituted by Doña Manuela Gutman, widow of Bustelo, Doña Petronila Rios y Gutman de Noya, and Doña Maria Rios y Gutman widow of Rubio, there exists on folio- 11 and 12 of said expediente a document which literally copied reads as follows:

They put an end to their differences of all kinds adjusting a complete and absolute transaction in accordance with the following basis or stipulations:

1st. Doña Manuela Gutman, widow of Bustelo, of her own right shall deliver immediately to her children of the first marriage named Doña María Guadalupe Rios widow of Rubio and Doña Petronila Patricia Rios de Noya, all the lands and appurtenances composing at present the property named "San José de las Mulas" situated in this district, with the exception of a portion of forty cuerdas belonging to to the Sucesión of her second husband Mr. Bustelo, acquired by said Sucesión at public auction.

2nd. Likewise she shall deliver immediately the said lady Gutman to the said daughters of her first marriage all the lands composing the property "Culo Prieto" in the jurisdiction of Naguabo.

3rd. Doña Manuela Gutman shall retain for herself as the only heir and exclusive owner in full dominion all the properties which are estimated to remain in the jurisdiction of Naguabo left at the death of her first husband José Rios y Berrios, that is, 900 acres of land, more or less.

142 4th. In the understanding that through this medium there is dissolved in a definite manner the co-ownership up to this time existing in the inheritance left at the death of Mr. Rios y Berrios, it is understood and agreed by this transaction that each contracting party shall be the exclusive owner of her share without reservation or limitation of whatever kind.

5th. Once this transaction is signed before the witnesses by the contracting parties without prejudice to making it a public deed within the period of forty-eight hours following this date, or as soon as the notary of the city returns to his office, the lawyers of lady

Gutman and her daughters shall desist from all their mutually judicial claims not only in the voluntary testamentary proceedings of Don José Rios y Berrios, but also in all its incidents and appeals.

6th. The lawyers Don José Maria Cuadra and Don Rafael Lopez Landron, representing Doña Maria Guadalupe and Doña Petronila Patricia the former, and Doña Manuela Gutman the latter, are requested to carry out to an end this transaction so that it may be carried out without loss of time until each interested party is left in full possession of what is given to *him* by this agreement and furnished with their respective titles of ownership inscribed in the Registry of Property free from charge or incumbrances.

The legal expenses of this transaction or deed, expenses of registry, proceedings for the ratification of the withdrawal, independently of the fees of the lawyers, shall be of the exclusive account of Doña Manuela Gutman.

8th. Although by reason of this settlement which the in-
143 terested parties considered highly convenient, the ladies Doña María and Doña Petronila are satisfied of the correctness observed by their mother in the painful position of the preservation of such large properties for the period of many years through grave difficulties taking place in the inheritance, the said lady Gutman reserves the right to present to her daughters as a public testimonial of her uprightness observed by her up to the present time a report explaining and proving the very difficult vicissitudes against which the inheritance has fought during the long time that it has been administered by her.

9th. The said Doña Manuela Gutman is hereby commissioned so that she having a better understanding than any one of the parties interested in the claims of all kinds which may exist pending or to be made in favor of the estate left at the death of Don José Rios y Berrios, to continue the same or institute the same within the shortest possible time, it being well understood that the favorable results of said claims shall be devided in three equal parts for the benefit and use of said lady Gutman, and her said two daughters of the first marriage.

Thus it is signed by the three contracting parties before the witnesses present and the lawyers who as parties also subscribe the same in Humacao on the sixteenth day of January, 1901.)) Signatures begin.—Interlined "as parties" valid.—M. G., widow of Bustelo.—María Rios, widow of Rubio.—Petronila P. de Doya.—Lawyer José M. Cuadra.—Lawyer Rafael Lopez Landron.—With [illegible] consent—Francisco Noya.—M. Argueso.—Jesus Almiroty.

The foregoing certificate corresponds well and faithfully with its original of its contents to which I refer, and in compliance with the
order of this date by virtue of the petition presented by Lawyer
144 Cuadra, issue and sign the present to deliver to him in Humacao on the nineteenth day of December, 1901.—Interlined—valid. Ameded "19"—valid.—José R. Aponte. There is the seal of the court. There are two revenue stamps cancelled by the seal of the notary.

146 Q. Do you recollect signing the private contract on the 16th of January, 1901?

Ans. Yes, sir.

Q. Who was your attorney at that time?

Ans. José María Cuadra.

Q. Do you know who was the attorney for Doña Manuela Gutman in the testamentary proceedings?

Ans. Mr. Lopez Landron.

Q. Is he the gentleman who was sitting here a few minutes ago?

Ans. Yes, sir.

Q. Did you have any other attorney at that time besides José María Cuadra?

Ans. No, sir.

Q. Did you have anybody else who was assisting you in your business affairs besides this attorney?

Ans. Nobody absolutely; I was alone.

Q. How long had you been in that condition without the assistance of anybody?

Ans. Five years; since I became a widow.

Q. Did you have any adviser or person to consult with during those five years?

Ans. No, sir; I didn't have anybody.

Q. Was José María Cuadra acting as attorney for anybody besides yourself at this time in this case?

Ans. Attorney of my sister Petronila as far as I know.

Q. Did he purport to act for Doña Manuela Gutman as her attorney?

Ans. I don't know.

Q. Who was the attorney of Manuela Gutman at this time, if you know?

Ans. That I know Mr. Landron only.

Q. Do you recollect the circumstances of the signing of this contract?

Ans. Yes, sir; I remember.

Q. Was it in the day time or night time?

Ans. It was at night time.

Q. In what town was it?

Ans. At Humacao.

Q. At whose house?

Ans. At my house.

Q. Who was present at the time?

Ans. José María Cuadra, Mr. Landron, Francisco Noya and Manuel Argueso.

Q. Was there anybody else in the house at that time?

Ans. Yes, sir.

Q. Who were they?

Ans. Mr. Patricio Algarin and Mr. Lino Rivera.

147 Q. About what time of night was that?

Ans. It seems to me that it was between eight and nine o'clock.

Q. Had your attention been called to the signing of a private contract of this kind at any time before that night?

Ans. No, sir.

Q. Had any of the parties who appeared that night, either Cuadra or any of the parties, spoken to you of their desire to have you sign a contract of this character?

Ans. No, sir.

Q. Had anybody at all spoken of the matter to you?

Ans. No, sir; nobody.

Q. Did you know anything about such a contract before that night?

Ans. I did not know anything.

Q. Whom did the lawyer Cuadra act for that night? Whom did he purport to act for?

Ans. I suppose it was me and my sister whom he was also representing.

Q. Whom was the lawyer Rafel Lopez Landron representing that night?

Ans. Representing my mother.

Q. Can you state where that contract was drawn?

Ans. As to that I do not know.

Q. Was it drawn up in your house that night?

Ans. No, sir.

Q. Who brought the contract to your house that night?

Ans. Mr. Landron carried it.

Q. Did you read it?

Ans. No.

Q. Just continue and tell everything that happened from the time these gentlemen came there until the time they left your house that evening.

Ans. They took those documents and said to me that they were the basis for a settlement or transaction.

Q. Did they say what kind of a transaction?

Ans. No; they were simply the basis for a certain transaction that did not prejudice my interests in the least.

Q. Did they explain to you what that transaction was?

Ans. They did not explain to me.

148 Q. Just continue and tell what happened there that night.

Ans. That those things were a basis for a transaction; that it did not prejudice my interests in the least; if the parties did not come to an agreement, it would be torn up.

(By the COURT:)

Q. Who said that?

Ans. It was said to me by Mr. Cuadra and also by Mr. Landron.

(By Mr. DEXTER:)

Q. Now continue.

Ans. Then I asked if my mother was satisfied that those properties should be given in usufruct.

(By the COURT:)

Q. Asked whom?

Ans. I asked the question of Mr. Landron.

(By Mr. DEXTER:)

Q. Well, what else? Then what happened?

Ans. He answered me that it was so, that she was satisfied; that she was convinced that those properties were to be given in the manner stated.

Q. What else?

Ans. I have nothing further to say. That is what happened that night.

Q. Did you read the document?

Ans. No.

Q. Why not?

Ans. Inasmuch as I saw that it was signed by my sister and it did not inspire me with fear.

Q. Did you ask the advice of your attorney Mr. Cuadra?

Ans. I didn't ask advice from him, but he encouraged me to sign it.

Q. At the time that the lawyer Landron, attorney for your mother, told you that your mother was satisfied to take the
149 properties in usufruct as is stated in that contract, then was anything said by anybody else?

Ans. No, sir.

Q. Did Cuadra say anything?

Ans. Mr. Cuadra affirmed what Mr. Landron said.

Q. At the request of whom or at whose advice did you sign that document?

Ans. Of nobody. The lawyers themselves inspired confidence. I had confidence in the attorneys and they encouraged me to sign it.

(By the COURT:)

Q. Ask her what the attorneys said.

Ans. To sign the document; that it would not prejudice me in the least; that it was simply the basis for a certain transaction.

Q. Who said that?

Ans. It was said by Mr. Landron and by Mr. Cuadra.

Q. Was Mr. Landron your attorney too?

Ans. He was my mother's attorney.

(By Mr. DEXTER:)

Q. When was it that you saw that document to read it and know its contents?

Ans. Two or three days afterwards when a copy was taken over to me.

Q. When you signed that document, as you have stated, what did you understand that document to be?

Ans. That they were the basis of a certain transaction for a division of the property in order to avoid a lawsuit.

Q. With respect to the reserved property, what did you understand it to be?

Ans. I had an idea that those properties belonged to my father.

Q. Did you have any understanding at that time when you signed that contract, of what the bases of this contract were or were to be?

Ans. I did not read the bases. How could I know?

(By the COURT:)

Q. She could know the bases without reading it. What did she understand her share was?

Ans. They gave me, more or less, an idea.

(By Mr. DEXTER:)

Q. Did you have any understanding at the time you signed that contract about what share you would get as a result of signing the contract, whether a half or a third or what it would be? And the portion which would go to Doña Manuela?

Ans. I knew that they were going to be divided into three parts, but that the three parts were not equal.

150 Q. What did you understand of the character of the part or interest which Doña Manuela was to get?

Ans. That it was to be adjudicated to her that she might enjoy the usufruct.

Q. When you signed that document that night, did you know that it contained a clause providing that Doña Manuela Gutman shall retain for herself and as sole and exclusive owner with all property rights all of the lands that may be found remaining in the jurisdiction of Naguabo left at the death of her first husband José Maria Rios, or approximately 900 cuerdas?

Ans. No, sir; I did not read the document that night.

Q. Did you understand, Doña Maria, when you signed that contract, just what rights you were getting or were being recognized in your favor; and the rights of Doña Manuela, what did you understand about that?

Ans. I had previously asked Mr. Landron, I have already stated.

Q. Well, what was that?

Ans. That those properties would be adjudicated to her in usufruct.

Q. To whom?

Ans. To my mother.

Q. What did he say?

Ans. Mr. Landron?

Q. Yes, or your own attorney Cuadra.

Ans. That it was to be so.

Q. Did they leave a copy of that contract with you that night when they left?

Ans. No, sir; they did not leave any.

Q. Who was it that furnished you a copy afterwards?

Ans. José Maria Cuadra.

Q. Was anything said about your signing it that night or giving you more time to sign it?

Ans. They asked me to sign it that night.

151 Q. Well, after Mr. Cuadra, your lawyers, gave a copy, what did you do?

Ans. I asked him how it could be so; that they said that the properties were to be given to my mother in usufruct and he said to me that I was absolutely mistaken.

Q. What happened after he told you that; that Doña Manuela was not getting the usufruct, but was getting the full title of the property?

Ans. What happened afterwards is that I became angry at him and he never called on me any more in spite of the fact that I sent to him.

(By the COURT:)

Q. How many days after she signed this document was it that she found out that it was not what she thought she had signed?

Ans. Two or three days when he brought a copy.

(By Mr. DEXTER:)

Q. Did you have him for your attorney for any purpose after that?

Ans. No, sir; not afterwards.

Q. Did you know anything about his joining with the attorney for Doña Manuela in the Humacao District Court in the petition asking for a declaration dominio of these lands?

Ans. No, sir; I did not.

Q. When was the first you knew of that?

Ans. I found it out in the edicts that I read in the official gazette.

Q. Where were you at the time?

Ans. Here in San Juan. I was sick at the time.

Q. Do you recollect when that was?

Ans. I think it was in the month of June, 1901, but I cannot state accurately.

Q. It was when you read the edicts published by the court?

Ans. Yes, sir; in the official gazette.

Q. Then what did you do?

Ans. Then I went to Humacao and it was then that I put the matter in the hands of Mr. Viaz.

Q. What was done then by you or Don Juan Viaz in that proceeding?

Ans. I do not know what Mr. Viaz did as to that.

Q. Did you give consent to anybody to bring that "expendiente dominio" proceeding in your name?

Ans. No, sir.

Q. Did you sign any paper in the expendiente proceeding?

Ans. That same night I signed another.

Q. Do you know what that was?

Ans. It was said to me that it was an authorization to enter the premises in order to make a division.

152 Q. To make the division between whom?

Ans. To divide into the three parts referred to by me already.

Q. Now, did you sign any paper authorizing this "expediente dominio"?

Ans. No, sir.

Q. What is your age, Doña Maria?

Ans. 34 years of age.

Q. When you spoke about the division of this property into three parts, what part did you understand your mother was to have, or what interest?

Ans. Those portions at Naguabo, which were the portions she wanted.

Q. Well, what kind of an interest?

Ans. The usufruct.

Q. Did you ever enter into a notarial contract, carrying out the terms of that private contract?

Ans. No, sir.

Q. Have you at any time since the date that private contract was signed, consented to the same?

Ans. No, sir.

Q. How long was the Attorney Lopez Landron acting as such for your mother?

Ans. I don't know as to that.

Q. Who was the attorney for the children of Doña Manuela by the second marriage?

Q. (Was repeated by the Interpreter.)

Ans. Mr. Landron.

Q. Is he the same attorney that appeared that night when the private contract was signed?

Ans. Yes, sir.

Mr. DEXTER: That is all.

Cross-examination.

(By Mr. JUAN HERNANDEZ LOPEZ:)

Q. What was your age at the death of your father José Maria Rios?

Ans. Five or six years.

Q. When you arrived at the age of reason who did you understand was in charge of the property as manager or administrator?

153 Ans. I understood it was my step-father who had married my mother.

Q. You answered to me that it was your mother who was in charge or managing the property.

Ans. Imagine at the age of five years what could I know? He asked me at the age of five years who was in charge and I said my mother.

Q. The question I put to you was: When you arrived at the age of reason who did you understand was in charge of the property or the estate of your father? And you answered me: "My mother." That was the answer you gave me.

Ans. I already answered it. That at the age of five years who

was in charge, my mother, but of course when I arrived at the age of reason, both were in charge.

Q. Who were the both?

Ans. My mother and her husband Bustelo.

Q. When did your mother marry Bustelo?

Ans. That I don't remember.

Q. At what age were you?

Ans. I do not remember.

Q. Do you know if your step-father interfered, as you say, in the management of the property by instructions of your mother?

Ans. I do not know as to that.

Q. Do you know if your mother had any participation in those estates?

Ans. I did not know until I married, when my husband asked for my inheritance.

154 Q. Do you know if your mother had any participation in thos- properties, whether the value of the property increased after the marriage or whether it was property in her own right?

Ans. I do not know as to that.

Q. Between your mother and yourself, did any question arise as to the properties left by the husband?

Ans. Not between myself and my mother but between my husband and them.

Q. I ask if between you and your mother there were any questions or controversy as to the property.

Ans. After the death of my husband, I myself made claims.

Q. And before your husband died?

Ans. It was undoubtedly my husband who made the request as to my property.

Q. Did you authorize your husband to make any claims to your mother?

Ans. He was authorized by the power.

Q. Was there any lawsuit between you and your mother?

Ans. Yes, sir; the testamentary proceedings were being carried out judicially, my husband acting in my behalf.

Q. Did Attorney Cuadra represent you in that testamentary proceeding?

Ans. No.

Q. Who represented you in that testamentary proceeding?

Ans. I do not know what lawyer my husband appointed.

155 Q. In what condition were the testamentary proceedings at that time?

Ans. My Attorney José Maria Cuadra might know as to that as he was in charge at that time.

(By the COURT:)

Q. Ask her to tell, if she knows, in what state the testamentary proceedings were.

Ans. I do not know the meaning of that question; I do not understand what is meant by that.

Mr. HERNANDEZ LOPEZ: I like to make an objection to the answer

given by the witness because at first she said she did not know what lawyer represented her and now she says that José Maria Cuadra was in charge.

The WITNESS: Lately after the death of my husband; I said that when my husband was alive I do not know who was in charge because there were several attorneys in charge and I do not know at that time, but lately Mr. Cuadra was in charge.

(By the COURT:)

Q. After his death?

Ans. Yes, sir; after the death of my husband.

(By Mr. HERNANDEZ LOPEZ:)

Q. When you signed that transaction at your house that night referred to, was the document turned over to you to sign?

Ans. It was not; it was put on a table that was in the parlor.

Q. In order to sign it didn't you take it into your own hands?

Ans. The document was lying on a table.

Q. Explain how you signed. Did you approach the table and take a pen in your hands and sign it?

Ans. Yes, sir; I approached the table, I asked for an inkstand, I sat down at the table and signed it.

Q. Did you simply lay your hands over the document to sign it and nothing else?

Ans. Nothing else.

Q. Didn't you read it?

Ans. No, sir.

Q. Were the ink-stand and pen on the table?

Ans. No, sir.

Q. Who brought them?

Ans. A little daughter of mine.

Q. Who asked for them?

Ans. I don't remember whether it was Mr. Landron or Mr. Cuadra.

Q. Were you at all threatened by Mr. Landron or Mr. Cuadra?

Ans. No, sir.

Q. Was violence shown to you?

Ans. No, sir.

156 Q. Was it said to you that some evil would result to your person?

Ans. It was said to me a few days afterwards.

Q. But before you signed it?

Ans. No, sir.

Q. When signing you understood that in the document was stated a division of the property into three parts, one for yourself, one for your sister Petronila and the last third for your mother in usufruct?

Ans. Yes, sir; that was my understanding.

Q. Did you understand that your mother had only a right to the usufruct of the property?

Ans. Yes, sir.

Q. Why did you understand it that way?

Ans. Because I heard my husband say that on several occasions; nothing else.

Q. Therefore you had an opinion as to the rights of your mother by what you heard your husband say and nothing else?

Ans. And because my properties were the properties of my father, and as I said before that I knew that those were my father's properties and belonged to us.

Q. Did you know or did you hear anybody say whether your mother brought any property to the marriage?

Ans. No, sir; I do not know.

Q. Did you know if your mother had a participation in that property as conjugal property?

Ans. I don't know anything as to that.

Q. Did you know if your mother had any right to the inheritance of any of the property of your brother at his death?

Ans. I knew she had a right to the usufructs.

Q. Did you know if your mother had any participation or share in those properties on account of having been the administrator or manager thereof for twenty-five years?

Ans. I don't know as to that.

Q. Did anybody tell you at the time of signing that document, not to read it?

Ans. Nobody said anything to me. I did not read it.

Q. Did anybody prevent you from doing it?

Ans. Nobody.

Q. On signing that document, madam, did you see whether there were any other signatures?

Ans. Yes, sir; I saw there were others.

Q. Which?

Ans. My mother's, my sister's and the attorneys'.

157 Q. Do you know if your sister Petronila had any claim against that document or objected to that transaction?

Ans. I don't know.

Q. When a copy of the transaction was taken to you three days afterwards, did you object to that document?

Ans. Yes, sir; I objected when Mr. Cuadra, the attorney, said to me the form in which it was made.

Q. In what manner or form did you make that objection?

Ans. I protested or objected.

Q. To whom did you make the objection?

Ans. I objected to Mr. Cuadra, to what he was telling me.

Q. Did you communicate that objection to your mother?

Ans. No, sir; I did not see any of them any more.

Q. Didn't you write to them?

Ans. I believe that I wrote to my sister a letter, objecting to see whether she still consented to that. It is such a long time since I wrote that letter, how can I remember? The details of everything it is impossible for me to remember because it is such a long time since.

Q. You didn't write to your mother?

COPY BOUND CLOSE IN

Ans. I don't remember anything else now. It is such a long time that I cannot remember anything by detail.

(Court adjourns until 10:00 a. m. Tuesday, when, by agreement of parties, another witness is called).

Direct examination.

(By Mr. DEXTER:)

Q. Please state your name, your residence and occupation.
Ans. Juan R. Baiz; San Juan.
Q. What is your age?
Ans. Thirty.
Q. What is your present occupation or employment?
Ans. Interpreter of the "Camera."
Q. Of the House of Delegates of Porto Rico?
Ans. Yes, sir.
158 Q. What is your residence?
Ans. San Juan.
Q. Do you know Mr. Santiago R. Palmer?
Ans. Yes, sir; I know him.
Q. How long have you known him?
Ans. I have known him for some years.
Q. Are you now or have you at any time past been associated with him in business?
Ans. I have not been associated in business with him, but have been his friend always.
Q. What are your relations?
Ans. Good friendship.
Q. How intimate has been your friendship; intimate always at clubs or parties? Have you been associated with him politically?
Ans. Politically always.
Q. Do you occupy any position in a party of which he is a member?
Ans. I have been a member of his party but not holding an office.
Q. I hand you a letter dated San Juan, 29th of April, 1903, addressed to Señor Don Juan F. Viaz Ochoteco, Humacao, and ask you whose signature that is and whose writing; who wrote the letter?
Ans. This letter was written by me and signed by me.
Q. You say that is your writing?
Ans. Yes, sir.
Q. Please state under what circumstances you wrote that letter.
Ans. I wrote that letter in view of a conversation I had with Mr. Palmer one day at his house.
Q. Which Palmer?
Ans. Santiago R. Palmer.
Q. Do you remember the date of that conversation?
Ans. It is impossible for me to recollect.
Q. With reference to the date of this letter.
Ans. It is exactly the same.
Q. Did he have anything to do with your writing that letter?

IN CENTER

Ans. I wrote that in accordance with him.
Q. What do you mean by that?
Ans. In view of a conversation I had with him.
Q. Did you do it voluntarily of your own accord?
Ans. I did it in view of a conversation I had with him, in view of which I thought it necessary to write that letter.
Q. What did he say about it?
Ans. He said it was all right.
Q. Did he read this letter?
Ans. He saw it before I sent it.
159 Q. What did he say or do?
Ans. He didn't say anything; he seemed to approve of it.
Q. How did you come to write this letter; why did you send it to Viaz Ochoteco?
Ans. I have already explained that I sent it in view of a conversation I had with him.
Q. Did anybody else request you to do it?
Ans. After we had a conversation, I wrote that letter and he approved it.
Q. This letter bears the emblem of the "Partido Federal" of Porto Rico, President's Office. Who was the President of the Federal Party at that time?
Ans. The President was Mr. Palmer.
Q. Where was this letter written?
Ans. At his own office.
Q. Do you recollect a telegram dated April 29, 1903, the same day, addressed to Viaz Ochoteco, Humacao, signed by Palmer? I hand you a telegram and ask you if you recollect it.
Ans. I do recollect it.
Q. Explain the circumstances.
Ans. It was written and signed by Mr. Palmer, requesting Mr. Viaz Ochoteco to follow the indications in my letter.
Q. Did you see Mr. Palmer write that telegram?
Ans. Mr. Palmer wrote that telegram in my presence.
Q. You and Mr. Palmer are on good terms at present?
Ans. We are on good terms.
Q. You esteem him very highly?
Ans. I do.

Cross examination.

(By Mr. PETTINGILL:)

Q. As I understand then, Mr. Baiz, the telegram was written before the letter?
Ans. No, sir; the telegram was written after the letter.
Q. And was it written also at Palmer's office?
Ans. As I said before, Mr. Palmer wrote the telegram at his desk.
Q. In his office?
Ans. Yes.
Q. Immediately after you had written the letter?

COPY BOUND CLOSE

Ans. Immediately after I wrote the letter.

Q. Are you sure of your recollection about Mr. Palmer having written this telegram?

A. I am sure of that because the circumstances which follow make me recollect perfectly well also the circumstances of the telegram.

160 Q. Isn't it a fact that the telegram was written by you and signed by Palmer?

Ans. No, sir; as I said before, the telegram was written by Mr. Palmer and signed by Mr. Palmer and a copy can be obtained at the telegraph office.

Q. Isn't it a fact that this telegram was signed by Mr. Palmer merely because he had a frank at the telegraph office and you didn't?

Ans. I don't recollect that; I cannot say.

Q. But you are sure that Palmer wrote the telegram?

Ans. I am sure of that.

Q. You say Mr. Palmer read the letter?

Ans. Mr. Palmer read the letter.

Q. You mean by that that he read every word of it or that you submitted it to him and he said all right?

Ans. I mean by that that the letter was written in view of a conversation that I had with him and he read the letter from one end to the other.

Q. How long did he have the letter in his hand?

Ans. That I cannot recollect. It was some time ago.

Q. Was anybody else present?

Ans. That I cannot say either. The letter has been written in 1903.

Q. Well you remember distinctly that it was in his office?

Ans. I do remember that distinctly.

Q. Then it seems to me you might remember whether you two were alone or whether others were present.

Ans. I do not recollect that. I think we were alone.

Q. Mr. Viaz also belongs to the same party with you and Mr. Palmer?

Ans. He belongs to the same party that Mr. Palmer and I belong to.

Q. He is also a good friend of yours?

Ans. They are both very good friends of mine.

Mr. DEXTER: Complainant now offers in evidence the letter and telegram which have just been identified by the witness, for the purpose of establishing the fact that Don Santiago R. Palmer was not a *bona fide* purchaser of this property for value and that he

161 simply lent himself as a friend of the parties defendant to have the properties involved in this suit transferred to him at their request.

Complainant offers in evidence the original bill of complaint filed herein on the 30th day of April 1903, one day after this letter and this telegram.

SE IN CENTER

(The letter and telegram are then read to the Court and marked Exhibit "C" for the Complainant and Exhibit "D" for the Complainant respectively.)

162 EXHIBIT "C" FOR THE COMPLAINANT

Partido Federal Americano de Puerto Rico. Presidentia.

SAN JUAN, *April* 29, 1903.

Señor Don Juan F. Vias Ochoteco, Humacao.

MY DEAR FRIEND: Don Santiago R. Palmer has just sent you a very urgent telegram, and I don't doubt that you with your customary refinement will appreciate the sense of the despatch; Señor Palmer, as well as the undersigned, are obliged to you for your attention, having fulfilled what you offered me of advising me of the moment of instituting the suit against the Sucession Bustelo in the United States Court. Now then *it is necessary* that you should delay this matter *some ten or fifteen days* with the only object and purpose that you already know, as it is only just that Don Santiago should put himself in a position to avoid any responsibility. You know that he has gained nothing in this matter and that only through his very good and accom-odating character has lent himself to a thing in which he enjoys nothing.

I must pray you to attend my indication and to please our friend. Remember that Don Santiago Palmer is involved in this, to whom by reason of his high sentiments and conduct we all owe great consideration and respect; if we were dealing with just anybody it would not be so bad, but you yourself know in what conditions Don Santiago has gotten into this matter.

It is urgent, my friend Don Juan, that you should delay this matter for those days. I pray you to please me since I know that you are a good friend of both and you will accom-odate us.

163 Yours affectionately,

(Signed) JUAN R. BAIZ.

(Signed) M. S. GEIGEL,
Int. U. S. Court.

EXHIBIT "D" FOR THE COMPLAINANT.

(*Telegram.*)

SAN JUAN, *April* 29, 1903.

Vias Ochoteco, Humacao:

Informed of telegram. Baiz writes, requests you to attend indications.

PALMER.

164 Q. In what capacity were you, his employé or friend or what?

COPY BOUND CLOSE

Ans. I was an intimate friend of both parties and I desired to bring a reconciliation.

Q. Had you represented Mr. Palmer or Mr. Ochoteco or were you acting in a friendly capacity?

Ans. In a friendly capacity.

(By the COURT:)

Q. Were you a volunteer or were you spoken to by anybody to act as a peace-maker?

Ans. Two or three months before that I acted of my own accord, but, as I said, I wrote this letter in view of a conversation I had with him previous to the writing of the letter.

Q. Which of the parties spoke to you about acting as peace-maker?

Ans. Not before that.

Q. Well, at any time.

Ans. No, not at any time. I was a good friend of both sides. I had a consultation with both sides.

Q. So then you were mutual friend.

Ans. Mutual friend of both sides.

165 (By Mr. DEXTER:)

Q. How was this letter written?

Ans. This letter was written in view of a conversation I had previous to the writing of the letter.

Q. Did Mr. Palmer have anything to do with the framing of the language?

Ans. It came from a conversation with him.

Q. Did you say anything more than Mr. Palmer had suggested to you?

Ans. No.

(By Mr. PETTINGILL:)

Q. Had you at any time before this approached Mr. Palmer as the representative of Mr. Viaz to arrange this question referred to in the letter?

Ans. No, not the same matter.

Q. Matter of this suit?

Ans. Oh! yes, we had various conversations on the subject.

Q. In which you were talking on behalf of Mr. Viaz?

Ans. I was talking on behalf of both sides.

Q. When you talked with Mr. Palmer, were you not endeavoring to arrange something on behalf of Mr. Viaz?

Ans. Not exactly that, but I was trying to bring matters to a settlement for both sides.

Q. Hadn't Mr. Viaz asked you to go to Mr. Palmer?

Ans. I don't recollect.

Q. Had Palmer asked you to come to him?

Ans. The circumstances you are speaking of now I don't exactly recall. It was some two years ago.

E IN CENTER

Q. So far as intervening then you were entirely a volunteer through your feelings of friendship.

Ans. Not entirely; my feelings of friendship came afterwards, but I worked on that in accordance with both sides.

(By the COURT:)

Q. How could you be on both sides of a bitter contest like this?

Ans. I was an intimate friend of Mr. Palmer and of Mr. Viaz; they were both of the same party.

Q. This letter would indicate that you wanted Mr. Palmer to serve in a capacity to bring about a fraudulent design. How could you be a friend of the other side if you were proposing a thing of that kind?

Ans. I don't understand wh-t you mean.

Mr. Dexter reads the answer of Mr. Palmer by way of explanation to the Court.

166 (By Mr. PETTINGILL:)

Q. Mr. Baiz, the second sentence of this letter reads, in English: "Now then it is necessary that you should delay this matter some ten or fifteen days with the only object and purpose that you already know." What was that object and purpose that Mr. Viaz already knew?

Ans. I don't recollect that. Mr. Viaz already knew that.

(By the COURT:)

Q. How do you know that?

Ans. Because they had a previous conversation before that.

Q. How do you know that?

Ans. Because I saw Mr. Viaz go to Mr. Palmer's house and speak to him. I had nothing to do about that matter.

(By Mr. PETTINGILL:)

Q. Then you don't know what it was that Mr. Viaz already knew?

Ans. I don't know that.

Mr. PETTINGILL: I think I have no further questions.

Witness retires.

167 Witness: MARIA RIOS DE RUBIO, Recalled.

(By Mr. HERNANDEZ LOPEZ:)

Q. Does the witness remember if her sister Petronila answered that letter that you wrote to her?

Ans. No, she did not answer.

Q. Did you speak with your sister Petronila with regard to the matter of the transaction?

Ans. No, I did not speak with her.

Q. Where did Mrs. Petronila live at the time?

Ans. I do not know for a fact where she lived because I did not visit her. I do not know the house. I know she lived at Humacao.

COPY BOUND CLOSE IN

Q. Did it not occur to you to go to the house of your sister inasmuch as she lived at the same town that you did?

Ans. It did not occur to me to go to her house since she did not come to mine.

Q. That is to say the friendly relations between you and your sister were interrupted.

Ans. No, sir; at that time we were friendly.

At this point an objection was interposed by Mr. Dexter, Counsel for Complainant, to the presence of Mr. Rafael Lopez Landron in the court room if he is to appear later as a witness.

Mr. PETTINGILL: Mr. Landron is not only an Attorney at the Bar, but he is an Attorney of record in this case.

The COURT: I make a ruling that he has got to withdraw his appearance either as an attorney or as a witness. If he persists in acting as Counsel here, I will not hear him as a witness at all.

Mr. Rafael Lopez Landron retires as Counsel in the case in order that he may appear as a witness.

Q. Did you and your sister Petronila visit each other?

Ans. No, sir.

Q. She did not come to your house, nor did you go to hers?

Ans. After the death of my husband she called at my house.

Q. How many times?

Ans. Once at my house and afterwards she called at my mother's house where I was.

Q. How often did you visit her in exchange for those visits?

Ans. Never, because I very seldom left my house. As a general rule I do not leave my house.

Q. What instructions, if any, did you give to your Attorney Mr. Cuadra in the matter of the testamentary proceedings of your father's estate?

Ans. He asked for the testamentary proceedings in order that they should be conducted in conformity with law.

168 Q. In order to come to a settlement with your mother and sister, did you not give him any instructions?

Ans. No, sir; none whatever.

Q. Those instructions referred simply to the judicial testamentary proceedings?

Ans. Yes, sir; for the judicial testamentary proceedings only.

Q. Now will the witness please say how, if you did not give any instructions to your attorney Mr. Cuadra as to settlement with your mother and your sister, could attorney Cuadra make a settlement? Was that settlement carried out without your instructions?

Ans. No, sir, I never gave him any instructions for that.

Q. How, if attorney Cuadra did not have any instructions to make that settlement, could he do it?

—. ——.

Q. Do you know how attorney Cuadra could arrive at that settlement without your instructions?

Ans. I do not know.

IN CENTER

Q. Does the witness mean to say that attorney Cuadra in making that settlement acted without instructions from you?

Ans. Yes, sir; without instructions to that effect; for that purpose.

Q. How is it then that the witness signed an instrument or settlement if she did not give her attorney instructions to that effect and without reading it?

Ans. Because it was said to me that they were the bases for a settlement, but that it was not a settlement and I trusted in the knowledge or opinion of my attorney.

Q. Did you sign simply on your absolute confidence in your attorney Cuadra?

Ans. Yes, sir; because I saw that my sister had already signed and I saw that my interests were not in the least prejudiced because she was not going to sign against her own interests.

Q. I would like the witness to tell me whether she signed — account of her absolute confidence in her attorney Cuadra or on account of her sister having already signed?

Ans. I signed because it was said to me by my attorney and because I was informed that they were the bases of a transaction or settlement.

Q. Did you know that those transactions were being conducted or carried on?

Ans. I have already said no.

169 Q. Did you or did you not have some conferences before that night of the signing of that paper?

Ans. I had interviews with my attorney Cuadra as to the testamentary proceedings, but not as to the transaction referred to.

Q. And did not the witness find it strange that a document for a transaction should be presented to her when no instruction had preceded?

Ans. I took my lawyer as an honest man and I did not think he would deceive me, and on that basis or with that idea, I signed the basis for the transaction.

Q. When signing did you not know that when you signed that document you obliged yourself to the contents of the document?

Ans. No, sir; it was an extra-judicial document which my attorney said would not prejudice me in the least.

Q. That is not my question. My question is: Did the witness know she obliged herself to the document by signing it?

Ans. No, sir; I did not know.

Q. Does not the witness know that by signing a document you oblige yourself to the fulfillment thereof?

Ans. No, sir; I do not. I have no reason to be acquainted with matters of law.

Q. The witness has stated already that upon signing the document she thought that thereby the difference between her mother and her sister would come to an end?

Ans. No, sir; I did not say that.

COPY BOUND CLOSE IN

Q. I understood you to say yesterday that that would put an end to the difficulties.

Ans. That could not be because they were simply the bases for a transaction that would bring the matter to an end.

Q. Did not the witness say yesterday also that after the document was signed, your mother would receive what she wanted; what she asked?

Ans. The usufruct of those properties.

Q. How did the witness know that her mother simply asked for the usufruct?

Ans. I did not know it. My lawyers told me it was so.

Q. When?

Ans. The night I signed the documents.

Q. Did not the witness until that night know the claims of her mother?

Ans. Yes, sir; up to that night I did not know.

Q. Then how could the witness state that questions arose between your mother and your sister Petronila? Please explain those difficulties.

Ans. What difficulties do you mean? I don't understand the question.

Q. I will explain better. The witness has stated that she gave instructions to her attorney to settle the testamentary proceed-
170 ings.

Ans. Yes, sir.

Q. Would not an amicable settlement between the three participants be possible?

Ans. We could never arrive at a settlement with my mother.

Q. Why?

Ans. Because we could never come to an understanding with her. She never consented to a division of the estate left by my father.

Q. Will the witness explain what your mother wanted, what you wanted and what your sister wanted.

Ans. I do not know what she wanted. I leave that to the attorneys who know.

Q. The witness has stated that she did not ever know what her mother wanted?

Ans. No, sir; I never knew. I did not know because the testamentary proceedings were being conducted judicially.

(By the COURT:)

Q. She didn't answer Mr. Lopez what she wanted.

Ans. What I asked was the properties which were left to me.

(By Mr. HERNANDEZ LOPEZ:)

Q. What portion of the inheritance?

Ans. I have not read the testament, therefore I do not know what portion belonged to me.

Q. So that the witness is absolutely ignorant or does not know anything about the rights that belonged to her? Does she mean that she did not know then or that she does not know now?

IN CENTER

Ans. That I did not know then.

Q. Didn't your husband explain to you what were your rights in the inheritance of your father?

Ans. No, sir.

Q. Did you not ask your husband as to that part?

Ans. I never learned of his affairs.

Q. Did not a conversation between you and your husband take place as to those inherited rights?

Ans. There were some conversations took place, the contents of which were that she was always claiming them and the denial was the usual consequence.

Q. But didn't your husband explain to you which were the claims he made?

Ans. To claim the inheritance left by my father.

Q. But without giving you any details at all of the rights claimed?

Ans. Yes, sir; without details.

Q. So that your husband was making claims as to property inherited by you without any instructions from you or any advice on your part?

Ans. I could not give any because I did not know anything about them. I was not acquainted with those matters.

171 Q. Nevertheless the properties were absolutely your property only and not your husbands?

Ans. I do not understand.

Q. Those properties claimed by your husband were absolutely yours or belonged to some other heirs?

Ans. They were the property of the heirs of my father, not of my husband.

Q. I mean to say that your husband had no participation in those properties and that the only thing for him would be for him to act in your behalf. Therefore he did not represent his rights but your rights and you were not acquainted with what he was claiming?

Ans. No, sir; I did not find out what he was claiming because I was not familiar with those things.

Q. When Mr. Cuadra handed over to you a copy of the transaction, and, as you stated, you expressed your disagreement, after that interview did you consult with any other attorney?

Ans. No, sir.

Q. Didn't you ask anybody else his opinion as to that matter?

Ans. No, sir.

Q. You remained without doing anything?

Ans. Until the edicts in the official gazette began to be published, in order to claim my rights.

Q. How long a time had elapsed; how long was it since the delivery of the copy of the private contract until the publication of those edicts, more or less?

Ans. That was in January. Perhaps it was in June when the edicts began to be published. Therefore six months, more or less.

Q. Were you advised of an expediente of dominio having been

COPY BOUND CLOSE

begun for the recording in the Registry of Property of that transaction?

Ans. When the edicts were being published.

Q. Nevertheless your attorney Mr. Cuadra signed a petition on your behalf. Did he have instructions from you to do it?

Ans. No, sir; he did not have them.

Q. Were the properties adjudicated to you by that transaction, delivered to you?

Ans. Never.

Q. Do you remember what properties or what lands were adjudicated to you in that transaction?

Ans. Yes, sir; I remember.

Q. Which?

Ans. Half of the estate called "Mulas."

Q. Have you ever been in possession of that estate?

Ans. No, sir; I have had it leased under contract with my mother. My husband leased it from my mother. It was a contract. I don't know what the contract contained. And I continued the lease at his death.

172 Q. When that transaction took place, was your husband living?

Ans. He was not living. The lease had not expired.

Q. Upon the expiration of the lease, what did you do with the estate?

Ans. I continued with it because I was not required to deliver it and it is understood that upon expiration of the term I was to continue with it.

Q. Did you continue in possession of the estate?

Ans. Yes, sir; I continued with the lease inasmuch as she, my mother, handed me the receipts of the lease. She herself approved the continuance of the contract through that means.

Q. Will you kindly explain your answer a little better. When the lease expired did you continue with the property?

Ans. Yes, sir; because I was never required to leave it. And the bills for the lease were continued to be handed to me.

Q. (Witness is asked to repeat last answer.)

Ans. Because the receipts for the lease were continued to be sent to me as was stipulated in the contract.

Q. My question is: If upon the expiration of the lease you continued in possession of the estate and if so, why?

Ans. Nobody required me to relinquish the estate and she still continued collecting from me the amount of the lease.

Q. Up to what time did she continue collecting the amount stipulated from you?

Ans. I do not remember.

Q. Did the witness pay by the month or by the year?

Ans. By monthly instalments.

Q. After the expiration of the lease how many monthly payments did you make?

Ans. I cannot state accurately by memory because don't you see that it is such a long time since then that I cannot answer accurately.

SE IN CENTER

Q. Was it many months or a few months?
Ans. I cannot state accurately. Can you not see the receipts themselves?
Q. At the present time who is in possession of that estate?
Ans. There is a judicial administrator or manager appointed by the Court.
Q. By what Court?
Ans. Humacao Court.
Q. At whose petition?
Ans. At the petition of my sister Petronila.
Q. Does the witness know why a judicial administrator has been appointed?
Ans. I do not know. Owing to the proceedings in court, it may be for that. I do not know.
173 Q. What suit does the witness refer to?
Ans. I do not know how to answer that question.
Q. Is it a lawsuit between you and your sister Petronila?
Ans. She was the one who requested the administrator or manager.
Q. When that receiver went to the estate to take charge of it, was the witness in the property?
Ans. Yes, sir.
Q. You delivered the property to the receiver appointed by the court in compliance with instructions of the court?
Ans. Yes, sir.
Q. Can't you tell us on what date you delivered the property to the receiver appointed by the court?
Ans. I cannot remember.
Q. Was it before or after the death of your mother?
Ans. After.
Q. Whom did the witness pay for the lease after the death of your mother?
Ans. Nobody claimed them.
Q. Notwithstanding the fact that witness did not continue paying the amount of the lease, did you continue in possession of the property?
Ans. Yes, sir; my attorney advised me that I had to continue in possession of the property in that form.

(By the COURT:)

Q. Who was that attorney?
Ans. Mr. Viaz Ochoteco.

(By Mr. HERNANDEZ LOPEZ:)

Q. Did the witness herself personally manage the property or through a manager?
Ans. Personally.
Q. Did you derive any benefits from the property?
Ans. Of course I did. I had a sub-lease to other parties.
Q. To whom did you sub-let it?
Ans. To Mr. Prudencio Ubarri; Emilio Rios another portion and José Maria Rodriguez the other portion.

COPY BOUND CLOSE

Q. What was the amount received by the witness from those sub-leases?

Ans. I cannot say now because there were several different amounts received monthly.

Q. Did the witness depend on those monthly incomes for a living?

Ans. No.

Q. On what?

Ans. I don't think I am obliged to answer that.

Q. How did the witness invest the rentals; what did you do with them if you did not depend on them for a living or support?

174 Ans. An account will have to be made to find out how they were used; otherwise we would not know.

Q. When the transaction was signed at your house, you said that there were present Attorney Cuadra, Attorney Lopez Landron, Mr. Noya, Mr. Argueso, Patricio Algarin and Mr. Lino Rivera. We know why Cuadra was there because the witness said so; also Mr. Lopez Landron. What was Mr. Noya doing there?

Ans. He went there accompanying the Attorneys Cuadra and Landron.

(By the COURT:)

Q. Was he a lawyer?

Ans. The husband of my sister.

Q. Is he a lawyer, I am asking?

Ans. No.

(By Mr. HERNANDEZ LOPEZ:)

Q. Mr. Noya, is he the husband of your sister Petronila?

Ans. Yes, sir.

Q. And appeared at your house accompanying Attorneys Cuadra and Lopez Landron?

Ans. Yes, sir.

Q. At the time of signing the document, did any conversation take place between you and Mr. Noya?

Ans. No, sir; no conversation took place.

175 Q. Did you not ask any questions of Mr. Noya as to the document?

Ans. I did not ask him any questions, but of Mr. Landron.

Q. The witness did not ask any question of Mr. Noya as to that transaction, did you?

Ans. No. sir.

Q. Didn't Mr. Noya spontaneously give you some information?

Ans. He did not.

Q. Mr. Noya kept absolute silence, did he not?

Ans. Yes, sir; he didn't say anything to me.

Q. Just simply exchanged greetings, is that all?

Ans. Yes, sir.

Q. Does the witness know why Mr. Noya went to the house?

Ans. I suppose it was because he went there accompanying the gentlemen who were with him.

E IN CENTER

Q. When Mr. Noya said to you that that instrument was the basis for a transaction, didn't Mr. Noya, your brother-in-law, say anything to you?

Ans. He also said that they were the basis for a transaction.

Q. But did he explain how?

Ans. He did not explain.

Q. Didn't the witness ask for an explanation?

Ans. No, sir.

Q. Was the witness satisfied with the statement of Mr. Noya that it was simply the basis for a transaction?

Ans. I said before that I trusted my attorneys.

Q. Did Mr. Noya say to you that his wife Petronila was satisfied with the transaction?

Ans. He did not say anything of the kind to me. I saw in the document that she signed.

Q. Did the witness see well and clearly the signature in the document?

Ans. Yes, sir.

Q. You looked over the signatures?

Ans. Sure; of course I did.

Q. And that part of the documents where the signatures were?

Ans. Yes, sir; only.

Q. It did not occur to you to read or see any other part of the document?

Ans. No, sir.

Q. Just simply on that part of the document where the signatures were?

Ans. Only.

Q. Did you see the date of the instrument?

Ans. I did not.

Q. Not even the date?

Ans. Not even the date.

176 Q. Just simply the signatures?

Ans. Yes, sir; the signatures simply.

Q. What was Mr. Argueso doing there at your house that evening?

Ans. He had already signed as a witness.

Q. Did he sign at your house?

Ans. No.

Q. He had signed before?

Ans. Of course he had signed before.

Q. With whom did he come to your house?

Ans. With Mr. Cuadra, Mr. Landron and Mr. Noya.

Q. So that the four appeared there?

Ans. Yes, sir.

Q. Did you have any conversation with Mr. Argueso?

Ans. I never had any conversation with any of them.

Q. Did you ask any explanation from any of them?

Ans. No.

Q. Didn't Mr. Argueso read the document there in a loud voice?

Ans. No, sir; he did not read it aloud.

COPY BOUND CLOSE

Q. Before you signed it?

Ans. Nobody read it. Mr. Landron was th only one who said something as to the manner of making the division.

Q. Do you remember that conversation?

Ans. I do not remember. It is such a long time since that I do not remember.

Q. What was Mr. Patricio Algarin doing there?

Ans. He was figuring out some accounts for me.

Q. What accounts were they?

Ans. Some cattle belonging to my husband that I sold.

Q. Was Mr. Algarin an employé of yours?

Ans. No, sir.

Q. Was he relation?

Ans. No, sir; neither.

Q. Then in what capacity did he make out those accounts?

Ans. He always made out the accounts for me when I needed.

Q. Did you pay him anything for it?

Ans. Yes, sir.

Q. Did you pay him for that work?

Ans. Yes, sir; he is a book-keeper. I paid him for his work.

Q. Therefore he was a book-keeper for you?

Ans. No, sir; he simply made out those accounts for me when I needed it.

Q. Where was the document signed, in the parlor, the dining room or where?

Ans. I said already in the parlor.

177 Q. Was Mr. Algarin in the parlor?

Ans. No, sir.

Q. Where was he?

Ans. In the hall adjoining the parlor.

Q. Did he hear what happened between you?

Ans. Yes, sir.

Q. Did he stop the work that he was doing?

Ans. He continued doing his work until he was asked to give the ink-stand that was needed.

Q. Did he remain in the hall or did he come in the parlor?

Ans. He was in the hall.

Q. Let us find out accurately. So that up to the time he was asked for the ink-stand he did not pay any attention?

Ans. He had to stop because I did not continue with him and he had to stop when the ink-stand was taken away from him.

Q. Did he see you sign?

Ans. He was sitting in the hall, therefore I cannot tell whether he did or not. He was there. That hall and the parlor are divided by a partition with arches.

Q. Could Mr. Algarin, from the place he was, see any of the persons there, Mr. Cuadra or Mr. Landron?

Ans. If he arose from his chair of course he could see because the partition consisted of arches, but how could I see whether he got up from his chair or not.

IN CENTER

Q. Did Mr. Patricio Algarin render you any services other than keeping accounts for you?
Ans. Yes, sir.
Q. Which?
Ans. He was on one occasion teacher of my son.
Q. Did you pay him for that service?
Ans. Yes, I paid him.
Q. At the time that instrument was signed, was he the teacher of your children?
Ans. No, sir; at that time he was not.
Q. At the time of the signing of the instrument, Patricio was in the hall where he was sitting?
Ans. Yes, sir; he was in the hall where he was working.
Q. Lino Rivera, who is that Lino Rivera? Do you know him?
Ans. Yes, sir.
Q. Who is he?
Ans. A man who lives in a little house situated outside of the town, which belongs to me and my sister.
Q. Does he live in that little house without paying anything?
Ans. Yes, sir; he does as a favor of the two sisters because both authorized him to live there.
Q. What is the occupation of Mr. Rivera? Does he render you any service?
Ans. No.
178 Q. Is he a laborer or what is he?
Ans. He is a laborer.
Q. Does he know how to read and write?
Ans. He does not.
Q. What was he doing that night that the document was signed in your house?
Ans. He is in the habit of going either to my house or to sister's house inadvertently.
Q. I didn't ask you that. What was he doing at your house?
Ans. He went there just as he does to my sister's house.
Q. Do you mean to say his visit there was casual? That he had no purpose?
Ans. Yes, sir.
Q. In what part of the house was that Rivera when Mr. Cuadra and Mr. Landron arrived?
Ans. He was at the same place where Patricio Algarin was writing in the hall.
Q. Was he sitting?
Ans. I don't know how he was because I didn't pay any attention to him.
Q. Could he see from his place to the parlor?
Ans. I don't know in what position he was; whether he could see or not.
Q. Well you were in the parlor. Could you see him?
Ans. I didn't see that either.
Q. When the ink-stand was brought to the parlor, did Lino bring it or did he come to the parlor at that moment?

COPY BOUND CLOSE

Ans. I said already yesterday that he did not; that it was a child, a little girl that brought it.

Q. Were Lino Rivera and Patricio Algarin together?

Ans. I said already that I did not see.

Q. Up to what time was Lino Rivera at your house that night?

Ans. I don't know. When I left, he was not there. I don't know up to what time he was there.

Q. When I left, what do you mean by that? You said to me: "When I left, Lino was not there any more."

Ans. When I left the parlor going to the hall.

Q. When you went to the hall after signing the instrument?

Ans. Yes, sir; when I went to the hall he was not there any more.

Q. Was there anybody else in that place besides Cuadra, Landron, Patricio Algarin, Lino Rivera and Mr. Argueso; was there anybody else in the house?

Ans. No, sir; there wasn't anybody else.

Q. Could you tell, yes or no, whether Patricio Algarin and Lino Rivera were acquainted, knew what Mr. Cuadra, Lopez Landron and Mr. Argueso went there for; what the purpose of their presence there was?

179 Ans. They had to know because from the place where they were to the parlor was a short distance. They could hear.

Q. My question is do you suppose it or do you know it for a fact?

Ans. I suppose that they learned of it.

Q. Your ground for your supposition is the short distance between the place where they were and the parlor?

Ans. Yes, sir.

Q. Did you speak with Don Patricio Algarin and Lino Rivera that night or any time afterward as to what happened there that night?

Ans. No.

Q. You testified that you are thirty-four years of age?

Ans. Yes, sir.

Q. What was your age when you signed that document?

Ans. The time elapsed since that date and this.

Q. It is not for me to ascertain. It is for you.

Ans. That happened in 1901.

Q. Therefore you were then thirty years of age?

Ans. Yes, sir.

Q. Were you at that time in the full enjoyment of your civil rights; did you manage and administer your own affairs?

Ans. Yes, sir; because I was alone.

Q. I mean to say whether or not you were subject to a guardian in any manner or form?

Ans. In no manner. Being of that age, how could I have a tutor?

Q. When Mr. Cuadra said to you as you have testified, that the instrument was the basis of a transaction which did not prejudice you, did he explain to you which party the transaction affected?

Ans. He didn't explain anything.

SE IN CENTER

Q. Didn't he say to you the persons between whom the transaction was arrived at?

Ans. He didn't say anything to me. He only asked me to sign it.

Q. Didn't he say to you that it was the basis for a transaction between you and your mother?

Ans. The basis for a transaction.

Q. Without mentioning the parties?

Ans. Without mentioning the parties, but it was to be supposed since the property belonged to me and my sister, that we were to be the parties.

Q. Just for the simple fact that Mr. Cuadra advised you to sign, on that advice alone you desired to sign?

Ans. Yes, sir; because he was my attorney and I had explicit confidence in him.

Q. Was there any other circumstance or reason that induced you to sign in addition to that one?

Ans. No, sir; that only.

180 Q. Did you ask Mr. Cuadra what were the properties that were to be adjudicated to your mother in that transaction?

Ans. I did not ask anything because I was told that they were the basis of a transaction, and what could be my purpose in asking?

Q. Don't you remember having stated yesterday that you asked and were told that certain property was to be left to your mother in usufruct?

Ans. I have always said that the basis of the transaction was that the property was to be left to my mother in usufruct.

Q. What was your reason for believing that they were to be in usufruct?

Ans. Because they were the property of my brother and it was only just that they should be given in usufruct.

Q. You said because they were properties of your brother?

Ans. Yes, sir.

Q. Was the property of your brother alone involved or the property of your father?

Ans. It was to be understood that the property involved was of my brother and of my father since the former had died.

Q. Then you understood that it was property left by two distinct inheritances?

Ans. Property left by the different inheritances because they were property left by my brother and my brother inherited from my father.

Q. What were the properties that you understood were to be given to your mother in usufruct; the whole of the property or simply the property of your brother?

Ans. I cannot specify what portion it was.

Q. You also stated that you signed because you saw that your sister had signed?

Ans. Yes, sir.

Q. You had full confidence in your sister?

COPY BOUND CLOSE IN

Ans. Yes, sir; because her interests were also involved and I did not think she would go against her interests and also because my lawyer advised me to.

Q. Therefore you understood or thought that the appearance of your sister's signature was the guarantee of your sister's interests?

Ans. No, it was also so because my attorney said so to me.

Q. Did you know if your sister had at any time made any claim against that transaction?

Ans. I do not know.

Q. Do you know if she was always satisfied with that transaction?

Ans. I do not know what she thought about it. I occupied myself in making my own claims and I did not look to her affairs.

181 Q. When you found out or saw the edicts published in the official gazette and you learned of the "expediente dominio," you wanted to oppose it?

Ans. Yes, sir; it was then that I spoke to Mr. Viaz in order that he should put in my claim since I saw the edicts published in the official gazette.

Q. What instructions were given by you to Mr. Viaz to challenge the expediente proceeding; what were the motives or reasons given him to challenge the proceeding?

Ans. Ample instructions to claim my rights.

Q. In general terms?

Ans. Yes, in order that he might make claim to my rights. I gave him full instructions to defend my rights; the same instructions I gave to Mr. Cuadra. I gave full powers to Mr. Viaz Ochoteco in view of the fact that I had relieved Mr. Cuadra from representing me.

Q. Did you tell Mr. Viaz to allege that you had been defrauded of your rights?

Ans. I will say again what I said before, that I gave him full instructions to claim my rights.

Q. Do you know if in that proceeding that you call the basis of the transaction that you signed, you were adjudicated the estate called "Culo Prieto" and a portion of another estate?

Ans. No sir; nothing of that kind was said.

Q. Didn't you say this morning that you knew that one half of that place by that name was adjudicated to you?

Ans. No, sir; I didn't say anything of the kind.

Q. How did you revoke the powers that you had previously given to Mr. Cuadra?

A. Through a letter.

Q. When did you write that letter?

Ans. I don't remember the date; it is impossible for me to remember.

182 Q. Was it after you received a copy of the transaction?

Ans. It had to be so.

Q. Are you sure?

E IN CENTER

Ans. I cannot state accurately because I don't remember when it was.

Q. You said before that when you found out through the copy given you by Mr. Cuadra of the terms or language of the transaction, you protested to Mr. Cuadra himself. Did Mr. Cuadra give you any explanation as to what was done; his reasons or grounds for it?

Ans. No, sir; he did not. The only thing he said to me was that everything was settled.

Q. Only that ?

Ans. That was all.

Q. No other reason?

Ans. And the statement that the property adjudicated to my mother was not in usufruct but in full title. It was then that I found out of the fraud, since some days before I was told something else.

Q. Did you denounce the fraud to anybody besides Mr. Cuadra?

Ans. Yes, sir; this witness Lino Rivera and I asked him if he did not listen to what happened the night before; the night when that took place; that it did not appear to be the same way that it was represented to me.

Q. What did?

Ans. You refer to the copy of the transaction. You ask me if I was given a copy of the transaction. That is what you ask me.

Q. I asked this lady if on the night the transaction took place or after that night she had had any conversation with those people as to the matter and she said no and now she said that she spoke to Lino Rivera when the copy was taken to her.

(No answer.)

Redirect examination.

(By Mr. DEXTER:)

Q. When you testified that you did not talk to anybody, including this man Lino Rivera, to what night did you refer? Have you any explanation to give to that question which Mr. Hernandez Lopez just put to you?

Ans. I mean to say that on that night I had no conversation with anybody. It was the day following that I referred the matter to Mr. Cuadra.

Q. When was it then?

Ans. Two or three days after that.

(By the COURT:)

Q. Ask her if she was satisfied on the night of the signing of the papers. Did she talk to anybody up to the time she saw Mr. Cuadra?

Ans. I didn't speak with anybody on that night.

183 Q. I am not speaking about that night, but I am asking how she discovered her rights during those three days.

Ans. Because in the third clause of the instrument that I read

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it was said that those properties were adjudicated to my mother in full right.

Q. Wasn't that all discussed in the family settlement?

Ans. No, sir; not at all.

Q. Nothing read at all?

Ans. No, sir.

Q. She said she understood it was a basis of a settlement. What did she understand was the basis of the settlement?

Ans. I always understood that my mother would be given that portion in usufruct.

Q. She says that was the basis that was reached that night?

Ans. That is what I thought; that it was to be the basis of the transaction.

Q. Had the mother been claiming for years?

Ans. No, sir; she was not making claims; she was in possession of everything.

Q. She was getting the usufruct then?

Ans. Yes, sir; she had all the capital with the exception of a small amount of rental that she gave me.

Q. What was the point of defference on which they had been at variance for years?

Ans. That the testamentary proceedings were being legally conducted or according to law.

Q. What was this woman claiming?

Ans. The inheritance that belonged to me from my father; the inheritance that I was entitled to from my father and also from my brother.

Q. Was she signing a document there without knowing whether she was getting what she claimed or not?

Ans. I signed that document only on that ground that I understood it to be the basis for a transaction. I did not understand it to be anything else.

Q. How long had this dispute in the family existed?

Ans. A good many years that those claims had been in force.

Q. She had been claiming on her part and her mother on her part; there was an issue?

Ans. Yes, sir; I was claiming what belonged to me.

Q. Who proposed the meeting at her house that night?

Ans. I do not know who proposed it.

Q. Did she know who was coming?

Ans. No, sir; I did not know who was coming. They had with them the instrument when they arrived.

Q. Didn't she know they were to meet there that night?

Ans. No, sir; I did not know. They did.

184 Q. Does she want us to understand that they came to her house that night with a document for her to sign and she didn't know any thing about it previously?

Ans. I signed it having full confidence in my lawyer who asked me to sign it.

Q. Didn't she know her lawyer was to be there?

SE IN CENTER

Ans. No, sir; I didn't know anything about it.

Q. How long had he been your lawyer?

Ans. I don't know how long the testamentary proceedings had been conducted.

Q. She ought to know how long this lawyer had been her lawyer and whether she had paid him anything.

Ans. A few months.

Q. That is all?

Ans. Yes, sir; that is all.

Q. Was he employed to bring about a settlement of this matter?

Ans. No, sir; it was for the testamentary proceedings.

Q. Is it not a fact that the difficulty that has been referred to by Mr. Lopez in his examination related simply to the protraction or drawing out of these testamentary proceedings?

Ans. I do not understand the question.

Q. The difficulty that was referred to by Hernandez Lopez in his questions, between her and her mother in the testamentary proceedings, was it not on account of the drawing out or protraction of the testamentary proceedings without a final settlement?

Ans. Yes, sir; on account of the time that elapsed that she never proposed a division.

Q. During the time since your father's death in 1875, who was managing all the properties that he left?

Ans. My mother.

Q. Who was collecting the rents?

Ans. She.

Q. Was she giving you anything of that?

Ans. Nothing until after I married.

Q. Then how much did she give you?

Ans. First she assigned me a pension amounting to $60; At another time she was giving me $100 a month and the last portion assigned by her to me was $82.

Q. Do you know how much she was getting from those properties per year, of your own knowledge?

Ans. I know it was a large income; that between the two properties the income amounted to something like $13,000 a year. You could see the lease in which the income is stated.

Q. What properties were they?

Ans. Naguabo and that called "Mulas."

Q. Did you get any part of that during those 25 years, except this $60 a month after you were married?

Ans. No, sir; never; nothing.

185 Q. During all that time and up to the time that private contract was signed that night, did your mother claim to have an interest or own any part of the property themselves or have anything except the usufruct?

Ans. She collected all of the rents and gave me that amount of $60 that I referred to before.

Q. Did she ever claim to you or of you that she had a part interest in the lands besides the usufruct.

Ans. She always received the full amount of the rents. Two or

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three years after the death of my father she contracted a second marriage and therefore she lost the *patria potestas*. When she contracted the second marriage I was a minor. My mother was not making any claims inasmuch as she was in charge of the property.

Q. After the death of your brother what claim did you make to the property?

Ans. That the property left at the death of my brother, that the usufruct of it belonged to my mother and the full ownership to us.

Q. To whom?

Ans. To Petronila and myself, the two sisters.

Q. Had you done anything to abandon that claim at any time?

Ans. I think that my husband during the testamentary proceedings was claiming that right.

Q. You were asked by Señor Hernandez Lopez whether you communicated to your mother or sister your objections to that private contract that Señor Cuadra brought you.

Ans. After that I wrote a letter to my sister.

Q. Why didn't you speak of the matter to your mother at that time? What were your relations with your mother at that time?

Ans. We were on good terms but she was sick at that time and I didn't want to disturb or bother her.

Q. You were also asked by Señor Hernandez Lopez about your remaining in possession of the property "Mulas."

Ans. I answered him that I did so because I was so advised by my attorney who said that I would have to continue that way until the suit was ended because I was charged with the lease.

Q. I hand you a letter dated January 1, 1902, addressed to you and signed by Victor Burset and ask if you recognize that letter.

Ans. Yes, of course I know it.

Q. Did you receive it?

Ans. Yes, sir.

Q. In the mail?

Ans. Yes, sir; I think so. They were already in San Juan.

Q. Look at this letter of M. Bustelo dated November 15, 1901, addressed to you and I ask if you recognize that letter.

Ans. Yes, sir; I recollect it.

Q. Look at this receipt dated the 31st of January, 1902, signed by Manuela Gutman per Francisco Burset, and I ask if you recognize that?

186 Ans. Yes, sir; this gentleman is a brother of Mr. Burset.

Q. Look at this receipt dated March 28, 1901, signed by Bustelo for Manuela Gutman and I ask if you recognize that.

Ans. Yes, sir; I recognize that.

Q. And this one dated February 28, 1901?

Ans. Yes, sir; I also recognize it.

Q. And this one of February 1, 1901?

Ans. Yes, sir; that is my mother's signature.

Q. And this one of May 14, 1901.

Ans. Yes, sir; May 14, 1901, that is my mother's signature.

Q. For what were those receipts given to you?

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Ans. Collecting from me the lease agreed upon for the property that I had.

Q. What property?

Ans. "Las Mulas."

Q. How much rent was that per month?

Ans. 200 pesos provincial currency.

Q. Up to the time of the death of Doña Manuela, your mother, who collected those rents?

Ans. Herself.

Q. And after she died?

Ans. Nobody collected them.

Q. Do you recollect how soon after you found out about this private contract it was that your attorney Viaz Ochoteco brought the suit to annul it in the Insular Court?

Ans. I don't remember but I know that it was after I read the notice or edicts in the official gazette.

187 Q. Do you know whether your sister Petronila has obtained any part of the property, the inheritance of your father? Do you know whether this property has been transferred to Petronila?

Ans. The properties at Naguabo?

Q. Yes.

Ans. Yes.

Q. How do you know that?

Ans. Because I heard so, that she had a part of the finca "Mulas."

Q. Who said so?

Ans. Everybody who talked to me about it I heard say that.

Q. Did you have any talk with either Petronila or her husband Francisco Noya about this transaction?

Ans. No, sir; with the parties with whom I had conversation. Everybody in Humacao knows that.

Q. Explain this house where this meeting took place at your house at Humacao. How large was that parlor room?

Ans. The parlor is a small room. More or less, the width of the parlor is from those tables up to that wall.

Q. About that square do you mean?

Ans. Yes, sir; that space square.

Q. Now this room where these two other men were, Algaring and Rivera; was that connected by any doors in between?

Ans. It is divided by an archway, a partition with two aches but no doors in it; two open arches.

Q. In those arches are there any doors?

Ans. No, sir.

188 Q. And the space between or the column of that arch, how wide is it?

Ans. Something like a yard and a fraction.

Q. (Using diagram) Is that more or less the idea?

Ans. Yes, sir; more or less.

Q. And this is the parlor here?

Ans. Yes, sir.

Q. The big room here, what was that used for?

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Ans. A hall to come in and out; two arches but no doors. There is a little ante-parlor which I used for a dining room.

Q. And how big was that ante-parlor?

Ans. It was very narrow. The length is from that table over here.

Q. From the table in that back room there can you see into the front room?

Ans. Yes, sir; you can see because the doors are open. The space is open.

Q. When Cuadra brought back that copy and discovered that it was not what you thought it was and you protested or objected to him, did he offer to correct it?

Ans. He said that that could not be fixed or straightened out.

Q. Did you ask him to correct it?

Ans. Yes, sir; I begged him to do it.

Recross examination.

(By Mr. PETTINGILL:)

Q. How old were you when you were married?

Ans. I don't remember now.

Q. What year were you married in?

Ans. 1890.

Q. You have stated that you wrote Mr. Cuadra a letter dispensing with his services. Did you ever write him more than one letter?

Ans. Yes, sir; insisting on his resignation from my representation.

189 Q. How many letters, as near as you can remember, did you write?

Ans. I remember having written two.

Q. Do you think you wrote more than two?

Ans. I don't remember.

Q. Both of those were after the time when you saw the citation in the paper?

Ans. I think so.

Q. You stated to Mr. Dexter that you begged Cuadra to correct that agreement, didn't you?

Ans. Yes, sir.

Q. When?

Ans. On the date when he took the copy to me.

Q. Haven't you testified repeatedly that when he brought that copy you told him you were not agreed to it and that he then said it could not be changed, and that there was no further conversation between you?

Ans. Yes, sir; after which he left and I didn't see him any more.

Q. When was it then that you begged him to correct it?

Ans. The day when he brought the copy.

Q. Then you have had more conversation than you have testified.

Ans. How?

Q. Until just now you never said anything about having asked him to correct it.

Ans. I said yes, sir, that I told him I was not satisfied. I said already that I told him I was not satisfied.

Q. Then you call telling him that you were not satisfied the same as begging him to correct it?

Ans. Yes, sir.

Mr. PETTINGILL: That is all.

(By Mr. DEXTER:)

Q. Did you ask him in so many words, specifically, to correct it?

Ans. Yes, sir; and he said that it cannot be because it was already signed.

(By Mr. PETTINGILL:)

Q. Why didn't you tell us in the first place that you particularly begged him to correct it?

Ans. I thought that you understood so when I said yesterday that I made protestations to him that the document did not prove to be what I understood it to be.

Q. I understood you yesterday to say that when Cuadra explained that agreement to you and you found out that you had been deceived as you say, that you did not want anything more to do with Cuadra and just told him to get away, and he left.

Ans. I didn't say that. I say that he left and didn't come again; that he left and didn't come again.

190 (By the COURT:)

Q. Ask her if she ever demanded the return of this paper that she had signed, from Cuadra or anybody else.

Ans. I didn't ask for it since a copy was left with him and he left and didn't come any more I thought that nothing would be gained by asking for it.

Q. He had her paper in his possession, the paper signed by her, had he not?

Ans. I do not know in whose possession it was afterwards.

Q. She says that he had it in his possession and that he got her to sign. Why didn't she try to get it back from him again?

Ans. Because since I found out the fraud two or three days afterwards when he brought the copy to me, he said that it could not be corrected.

Q. Ask her why she didn't demand the return of the paper that she had signed when she discovered that she had been imposed upon, as she says; that her lawyer had betrayed her.

Ans. Because I had nobody to represent me and at that time I was sick and I came to San Juan to have an operation performed on my throat.

Q. Why didn't she ask to have the paper given back to her?

Ans. Because he said to me that nothing could be done because it was already signed.

Q. She didn't ask him to do anything. She didn't ask for *the* back or anything.

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Ans. I asked him to see whether something could not be done to change it and he said no, that nothing could be done.

Witness retires.

Mr. PETTINGILL: If the testimony of the complainant herself upon the stand has not shown some plausible ground for fraud and deceit, complainant cannot strengthen her own story by the testimony of others. Defendants move for a non-suit.

Mr. DEXTER: This case also involves combinations between attorney and client.

The COURT: I overrule the motion.

Mr. PETTINGILL: Save an exception.

The COURT: We will hear the testimony relative to the signing of the contract that night.

191 Witness: LINO BUSO.

Direct examination.

(By Mr. DEXTER:)

Q. What is your name?

Ans. Lino Busó.

Q Where do you live?

Ans. On the outskirts of the town.

Q. Of what town?

Ans. Of Humacao.

Q. Do you know Doña Maria Rios?

Ans. Yes, sir.

Q. Do you know Petronila Rios?

Ans. No, sir.

Q. Pepita Noya?

Ans. Yes, her name is Noya because she is married to a Noya; a sister of this lady.

Q. How long have you known these ladies?

Ans. My relations between the two families, 14 years.

Q. Did you know Manuela Gutman?

Ans. Yes, sir; I was employed at her house.

Q. At whose house?

Ans. I was a servant employed by Manuela.

Q. Have you been employed by either of the daughters, Doña Maria or Petronila?

Ans. After the death of the old lady, I always remained with one or the other of the daughters.

Q. Most of your life has been spent with some of the family?

Ans. Yes, sir.

Q. What are your relations with the family, are you on good terms with the family?

Ans. We are on good terms.

Q. Do you remember a meeting in the house of Doña Maria Rios about four years ago one night?

Ans. I remember that one night four parties came into the house of Doña Maria Rios.

E IN CENTER

Q. Who were those parties?

Ans. Those I know were Noya, Mr. Cuadra and Mr. Argueso. There was another man but I did not know him.

Q. What kind of a looking man was the other; was he tall or short?

Ans. The other party that came in was a short stout man dressed in a white suit.

Q. Did you learn subsequently who he was?

Ans. I did not find out that night, but on the following day I was told who the party was. I was shown the man the day following and it was the same party who was at the house the night before.

Q. Who was he?

Ans. When he was pointed out to me the following day I knew him. It was Attorney Landron.

192 Q. At what time of the night had you gone to the house?

Ans. When those four gentlemen arrived I was at the house.

Q. What were you doing at the time?

Ans. When I arrived at the house, Mr. Patricio Algarin was making out some accounts of Mrs. Maria and a short time after I came into the house these four parties arrived.

Q. What happened then?

Ans. What happened while I was there? They asked for an ink-stand that Mr. Patricio was using and it was taken over to them.

Q. Continue; state what happened.

Ans. When the ink-stand was taken away, I remained with Mr. Patricio talking to him. While I was talking to Patricio, I heard Doña Maria Rios say aloud that the portion of her borther was to be divided up between herself and her sister. She said that the portion of the inheritance of her deceased brother was for her and her sister. Then I heard that the answer to that statement was: Madam, as to that, do not worry; that is already settled.

(By the COURT:)

Q. Who said that?

Ans. I heard the words. There is a little hall in the house which divides the parlor, with two arches or two entrances without any doors to them. The conversation took place on the other side but I did not see who spoke the words.

(By Mr. DEXTER:)

Q. The Judge asked you who spoke those words.

Ans. I heard the words; I do not know who spoke them.

(By the COURT:)

Q. Were Petronila and the mother there?

Ans. No, sir; they were not present. The only lady present was the widow of Mr. Rubio.

(By Mr. DEXTER:)

Q. Did you recognize Mr. Cuadra's voice?

Ans. No, sir; I didn't recognize any voice.

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Q. Do you know whether he was there?

Ans. I saw the four men come in. I recognized Mr. Cuadra, Mr. Argueso and Mr. Noya and also that other gentleman whom I did not know. On the following day he was pointed out to me as the man who was at the house the night before.

Q. Did you hear anybody read over a paper or see anybody read over a paper?

Ans. No, sir; right then I left. I simply heard those words. After I heard that Mrs. Maria Rios, widow of Rubio, say that the portion of the inheritance of her brother belonged to her and her sister and I heard that she was told: Madam, do not worry, that is all settled.

193 Q. How long after the ink-stand was taken from the back room did you stay there?

Ans. After the ink-stand was taken away and those words that I overheard were said, I left.

Q. Do you know whether Doña Maria had signed any document in that room in the presence of those gentlemen before you left?

Ans. No, sir; I do not know. No, sir; I didn't see that.

Q. Is that all you know about the matter?

Ans. All I know is that she said in that meeting that the inheritance belonging to her deceased brother belonged to her and her sister and she was told in reply to that, that she need not worry about that; that that was all settled.

Mr. DEXTER: That is all.

(By Mr. HERNANDEZ LOPEZ:)

Q. You live in a house that is the property of Doña Maria?

Ans. Yes, sir; I live outside of the town in a house that is owned by the two sisters.

Q. Who gave you that house to live in?

Ans. I went to that house because it was turned over to me by the widow of Mr. Rubio, who was afraid of it after her husband died. She told me to live in it and take care of it because there was some property in it; some wardrobes, etc.

Q. Who gave you the house to live in?

Ans. Mrs. Maria, to take care of the things that were left there.

Q. Did Mrs. Rios live in that house before?

Ans. Yes, sir; she lived there in that house.

Q. Was anybody else living in that house with you?

Ans. Yes, sir; I lived there with my wife and little child.

Q. Were you paying anything for the house?

Ans. No, sir; I was not paying anything. She gave me the house to take care of it.

Q. Up to what time did you live in it?

Ans. I am still living in it.

Q. Therefore how long have you been living in that house?

Ans. Something like five or six years.

Q. Are you still living in the house?

Ans. Yes, sir.

Q. Even now you don't pay anything for the house?

IN CENTER

Ans. No, sir; she has never charged me anything for the house.

Q. You said that you were a servant of Mrs. Manuela Gutman?

Ans. Yes, sir; I was a servant and I always remained with the family, some members of the family.

Q. Why did you cease being a servant of Doña Manuela?

194 Ans. Because she came to San Juan, and then I remained with the daughters. I was living with both of them.

Q. You said that you saw four gentlemen come into the house?

Ans. Yes, sir.

Q. Of which you knew three?

Ans. Yes, sir.

Q. But you didn't know the other one?

Ans. Yes, sir; but on the following day the other man that was there was pointed out to me.

Q. Who pointed out to you on the following day that gentleman that was there?

Ans. Mr. Patricio Algarin, as that man passed by the house, said that is the man that was at the house last night.

Q. Were you at the house?

Ans. No, I was in the street. It was in the street as the man passed by Mr. Patricio pointed him out to me.

Q. Did Mr. Patricio say that to you without your asking?

Ans. Yes, sir.

Q. You said that they carried the ink-stand up stairs?

Ans. Now this portion over here is the hall which they used for a dining-room and the adjoining room is the parlor and is divided from the hall by an archway with two arches. They asked for the ink-stand and they took it to the parlor.

Q. Is the parlor on the upper floor?

Ans. No, sir; it is on the same floor with the hall.

Q. Are there any steps leading to the parlor?

Ans. No, sir; no steps; both the hall and the parlor are on the same floor. There is no difference in the floor. The two rooms are divided off by a partition which has two openings without any doors.

Q. Ever since those gentlemen came to the house until the ink-stand was taken over to the parlor, how long was it?

Ans. I don't recollect.

Q. From the moment those gentlemen came to the house until the ink-stand was taken from the hall to the parlor, was it a minute or an hour or half an hour?

Ans. I cannot say accurately, but, more or less, from 15 to 20 minutes.

Q. During those 15 or 20 minutes, that is during the time elapsed from the arrival of those gentlemen and the taking of the ink-stand to the parlor, did you hear any conversation in the parlor?

Ans. No, sir; I was separate from the parlor. I was in the room adjoining the parlor but I did not hear any conversation.

Q. From the moment those gentlemen arrived until the ink-stand was taken, you didn't hear any conversation?

195 Ans. No, sir; I didn't hear any conversation because I was not in the parlor. I was in the hall adjoining and all

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the conversation I heard was those words said by Mrs. Rios referred to.

Q. Did you continue in the same place? Didn't you move away from that place?

Ans. I stayed there with Mr. Patricio; right there with him.

Q. Right in the same place where you were when the ink-stand was taken away?

Ans. Yes, sir.

Q. Did you stay in the same place after the ink-stand was taken to the parlor?

Ans. Yes, sir; I stayed right there in the same place where I was with Mr. Patricio and it was then that I heard that the lady said that the share of the deceased brother was to be given to herself and her sister Petronila and she was told in answer to that that she need not worry about that; that it was all settled.

Q. Who took the ink-stand to the parlor?

Ans. A little girl; daughter of the lady.

Q. During the time that you were alongside of Mr. Algarin after those gentlemen came in, until you left, did you say anything to Mr. Algarin?

Ans. No, sir; just simply trifling conversation as to the accounts that he was making for Mrs. Maria.

Q. Did Mr. Patricio say anything as to what was happening in the parlor?

Ans. No, sir.

Q. After you heard those words you left?

Ans. I didn't hear anything else and I don't know anything else, and all I have testified to is that Doña Maria said that that portion was to be adjudicated to her and to her sister and that she was told in reply to that that she need not worry about that.

Q. When you left did those parties stay there?

Ans. Yes, sir.

Q. Where did you go when you left there?

Ans. I went to my house.

Q. Didn't you see them leave the house?

Ans. No, sir; I didn't see them go out of the house. All I heard was those words said by the lady and right then I left the house.

Q. Did you speak to anybody the following day as to what happened.

Ans. No, sir; I didn't speak to anybody.

Q. Or the next day?

Ans. No, sir.

Q. Or the third day?

Ans. No, sir.

Q. Or the fifth day?

Ans. No, sir.

196 Q. Did you ever have a conversation as to that?

Ans. No, sir.

Q. With anybody?

Ans. No, sir; with nobody absolutely. I do not know as to anything else and I did not have to speak to anybody else about that matter.

E IN CENTER

Q. Therefore up to this time you have never had any conversation as to that matter with anybody?
Ans. No, sir; I have not.

Redirect examination.

(By Mr. DEXTER:)

Q. Have you talked to Doña Maria or any of her attorneys with respect to this matter?
Ans. I have only talked with her attorneys.
Q. With whom have you spoken? Did you speak with me?
Ans. With Mr. Viaz.
Q. Did you speak with me?
Ans. Yes, sir.
Q. When the gentleman, Mr. Hernandez Lopez, asked you if you had spoken to anybody about that matter, did you understand the question?
Ans. Yes, sir; when that gentleman asked me if I had any conversation with anybody up to this time, I said no, sir, I have had no conversation with anybody up to this time, except what I have testified. The only parties I have talked to are the lawyers of Mrs. Maria.
Q. Do you remember two or three days after that meeting there that night having had a conversation with Doña Maria?
Ans. Two or three days after that night when that scene took place, I came to the house of Doña Maria and found her in a very unsettled mood and she said to me: "See how these people have deceived me."

(By the COURT:)

Q. Ask him now how he came to answer Mr. Lopez that he never talked to anybody about the case. He asked him about the first, second, third and fourth day and he said no.
197 Ans. Well I didn't have any conversation with anybody, but two or three days afterwards I came to the house and talked to the lady as I said.
Q. Ask him how he came to answer Mr. Lopez that he never talked to anybody?
Ans. Because at that moment I did not happen to remember that two or three days afterwards I called at the house and had that conversation.

(By Mr. DEXTER:)

Q. What is the correct statement; that you had a conversation with Doña Maria two or three days afterwards or that you did not have the conversation?
Ans. I want to tell the truth because I am a Catholic and I want to tell the truth. Two or three days afterwards I went to the house and found her in an excited mood, and she said: "Lino, see how they have deceived me."

(By the COURT:)

Q. How did you come to be stationed there to listen to just part of the conversation and then leave? Who told him to station himself there to listen to the conversation?

Ans. Because I am in the habit of coming in and going out of the house.

Q. Did he know they were coming?

Ans. No, sir; I didn't know anything about it. I am in the habit of calling at her house and at her sister's.

Q. Why did he leave just when that was said? Might not there have *have* been some more important matter for him to listen to?

Ans. After Mrs. Maria said that I left for my house.

(By Mr. DEXTER:)

Q. The Court asked him why he left.

Ans. Because I didn't have anything to do there. Inasmuch as that was not my business, I left for my house. I am in the habit of calling at either Mrs. Maria's house or her sister's house and that night I happened to be there when those gentlemen came, and overheard those words, but I was not there for any particular purpose. There was no malice in my presence there.

(By the COURT:)

Q. It was a mere accident, I suppose.

Ans. Yes, sir; in view of the fact that I was in the habit of calling on her.

(By Mr. DEXTER:)

Q. How often have you been in the habit of going to Doña Maria's house?

Ans. Since I have been working with that family I have been in the habit of going in and out of that house very frequently.

Q. Did you ever do any work or errands for Doña Maria at that time?

Ans. No, sir; I had no errands; just simply because I was in the habit of coming in and going out of the house.

198 Q. You are an old servant of the family, are you not?

Ans. Yes, sir; I am an old servant of the family and I am in the habit of calling at the houses of the sisters and other members of the family.

Q. Are you in the habit of dropping in at the houses of the other members of the family frequently?

Ans. During that suit I was in the habit of taking meals with Mrs. Carola. It is my habit or custom with all of them.

Q. You said you are living in a house of Doña Pepita and Doña Maria. Do you pay any rent to Doña Pepita?

Ans. That house belongs to Mrs. Maria and to Mrs. Patronila but I am not in the habit of paying any rent.

Q. Don't you pay to either of them?

Ans. To neither one of them.

Q. Doña Pepita ever ask you for the rent?
Ans. No, sir.

Witness retires.

Witness: PATRICIO ALGARIN.

Direct examination.

(By Mr. DEXTER:)

Q. State your name.
Ans. Patricio Algarin.
Q. What is your age?
Ans. 58 years of age.
Q. Where do you reside?
Ans. Barrio of Manati called El Coto.
Q. What is your present profession?
Ans. Nothing; I am sick at present; I have been sick for three or four months.
Q. What has been your last profession or avocation?
Ans. Public school teacher.
Q. Prior to that have you engaged in any other profession or avocation?
Ans. As an office clerk; also book-keeper.
Q. Have you ever lived in Humacao?
Ans. Yes, sir; I am a native of Humacao.
Q. How long have you lived there?
Ans. Up to the age of 16 I lived at Humacao, when I left for Rio Piedras, and from this town to San Juan.
199 Q. Did you return to Humacao?
Ans. In 1873.
Q. How long after 1873 did you live in Humacao?
Ans. Up to the present date, about three months ago when I came here.
Q. Do you know Doña Maria Rios?
Ans. Yes, sir.
Q. How long have you known her?
Ans. Over 24 or 25 years; more than that; ever since she was 10 or 11 years of age.
Q. Have you had any business relations with her; have you been employed by her in any capacity?
Ans. On several occasions I was the teacher of her children, and also very often she occupied me to settle her cattle accounts.
Q. Do you understand book-keeping?
Ans. Yes, sir; I know book-keeping, single entry.
Q. How long were you assisting her in this capacity and teaching her children?
Ans. I cannot say accurately because on different occasions I used to teach her children and then leave for San Juan and come back and engage in the same occupation; also when she left for Madrid, Spain with her mother, I ceased teaching her children.
Q. Do you remember being in her house one night four years

ago when Mr. Cuadra and Mr. Landron and Mr. Argueso were there?

Ans. Yes, sir; I remember.

Q. Do you recollect the month?

Ans. It was in 1901, after Three Kings' Day.

Q. When is Three Kings' Day; what day is that?

Ans. January 6th.

Q. And about how long after that was it, more or less?

Ans. I cannot state; I don't remember. I know it was about that time.

Q. Do you recollect about what time of the day or night you went to the house of Doña Maria on that occasion?

Ans. I arrived there at about seven o'clock in the evening.

Q. What was the object of your visit there?

Ans. For the purpose of making out some cattle accounts.

Q. Had you gone there before for that purpose?

Ans. On several occasions.

Q. Did she send for you that night?

Ans. Yes, sir; she sent word to me in the afternoon for the reason that I was not teaching the children then.

Q. After you arrived at her house that evening, what happened, if anything?

Ans. I remember that while I was making out the accounts and getting the information to make them out, four gentlemen came in.

200 Q. Who were those gentlemen?

Ans. One was Mr. José Maria Cuadra, Mr. Landron, Francisco Noya and Mr. Manuel Argueso.

Q. State what happened after they entered, if you know.

Ans. When those gentlemen came in, we stopped working writing out the accounts and Mrs. Maria went to meet those gentlemen.

Q. Where were you and Doña Maria when these gentlemen entered; in what room?

Ans. We were in that hall which is used as a dining room, adjoining the parlor. There is a partition dividing the two rooms with two openings, no doors. We were sitting in the small space with my back to the wall.

Q. Do you know Lino Buxo or Lino Ramirez?

Ans. Yes, sir.

Q. Was anybody else there besides yourself and Doña Maria?

Ans. That Lino who was opposite to us about two yards from us.

Q. How long had he been there?

Ans. He was there about 15 minutes. I stayed there and he left before those gentlemen did.

Q. Now state what happened after those gentlemen arrived there that night.

Ans. What happened after those gentlemen arrived was that Mrs. Maria talked with Mr. Cuadra and Mr. Landron, he had a conversation with her and they said to her: "We come here, Mrs. Maria to treat about the basis for a testamentary proceeding in order that you should come into possession of your property." They said

"these are the basis; you can sign inasmuch as Mr. Noya and his wife have already signed."

Q. Who said that?

Ans. Mr. Cuadra, her lawyer.

Q. Did you hear Doña Maria say anything?

Ans. Then Mrs. Maria interrupted and said: "The inheritance left by my deceased brother is reserved property." And they said: "As to that we have nothing to say inasmuch as your mother is satisfied with the usufruct of the inheritance of your brother."

Q. Who was it said that?

Ans. Mr. Cuadra, the lawyer.

Q. Did Señor Landron say anything?

Ans. Yes, sir; he also spoke, but Mrs. Maria's attorney was Mr. Cuadra. When Mr. Cuadra told Mrs. Maria, she sent a little girl called Serida for the inkstand which I was using.

Q. Who took the ink-stand into the other room?

Ans. The little girl, daughter of Mrs. Maria.

Q. Where you were sitting could you hear all that was said in the other room?

201 Ans. Yes, sir; because there is a partition between the two rooms with a door to the left hand and the right and I was sitting in the small space in the center with my back to the wall, and, as I was doing nothing, I could listen.

Q. How far away were you from where these gentlemen were?

Ans. About two or three yards.

Q. This partition that you spoke about, were there any doors that closed the openings?

Ans. No, sir; it had two openings, two arches.

Q. How long had you known, prior to that time, Señor Cuadra?

Ans. I knew Mr. Cuadra something like 20 years and more than that. We were both born in the same town.

Q. How often had you been accustomed to see Señor Cuadra?

Ans. He passed along and met me and exchanged salutes with me.

Q. How often would that happen? How many times a week, more or less?

Ans. More or less, two or three times a week because we lived in the same town.

Q. How long did that continue, that two or three times a week you saw him?

Ans. With frequency on account of the fact that we both lived in the same town and sometimes we met in one street and sometimes in another.

Q. How large a town was Humacao at that time? How many inhabitants, more or less?

Ans. I don't remember the population at that time.

Q. Large as San Juan?

Ans. No, sir; about half.

Q. Did you know Mr. Cuadra's voice when you heard it?

Ans. Yes, sir.

Q. Did you recognize it in the conversation there that night?

Ans. Yes, sir.

Q. Before these gentlemen entered, did you know anything about their coming? Had Doña Maria said anything to you about it?

Ans. No, sir.

Q. After they retired what happened?

Ans. After they left, nothing particular; we continued our business figuring and after we were through I left the house. The only thing I heard was the name of Mr. Landron mentioned and I recognized him as a short stout man, wearing light clothes with a black mustache.

Q. Who was it, if you know, who explained the contents of that document to Doña Maria?

Ans. Mr. Cuadra and the others. They spoke as to the basis as I said before; that they went there for that purpose, for a settlement of the testamentary proceedings.

202 Q. Did Mr. Landron say whom he represented there?

Ans. Mrs. Manuela.

Q. What, if anything, was said by Mr. Landron with respect to Doña Manuela?

Ans. The only thing he said was what I have already said, that he came there representing Doña Manuela to arrange the basis for the testamentary proceedings; as to the rest, what I have already stated.

Q. Do you know whether Doña Maria signed that document?

Ans. I do not know whether she signed or not. I know the inkstand was taken there, but I don't know whether or not she signed. Because I remember Mr. Landron stated that if the bases were not carried out, it would be torn up. It was simply a basis for the settlement of the testamentary proceedings.

Q. Who was Mr. Argueso?

Ans. A merchant.

Q. Do you know how he came to come there that night?

Ans. I do not know.

Q. Do you know whether Mr. Argueso is a client of Mr. Landron?

Ans. I do not know.

Q. In the month of November last where were you living?

Ans. At Humacao.

Q. What was your condition of health at that time?

Ans. I have always been in bad health. I suffer from a mental trouble and cerebral trouble, rheumatism.

Q. Do you remember giving a declaration last November in this case?

Ans. Yes, sir; the same one that I am testifying now.

Q. What was your condition of health at that time?

Ans. I was very weak and delicate in health and what I wanted was for them to get through as quickly as possible.

Q. Were you confined in your bed or not?

Ans. Yes, sir; I first suffered with the grippe and afterwards with pneumonia.

Q. When that deposition was given you were asked the question "Was the private document read to Mrs. Maria Rios" and you then answered: "Yes, sir." Was that correct?

203 Q. What is the fact about those incidents; which is correct or have you any explanation to make with reference to that declaration?

Ans. Nothing at all.

Q. What do you mean to say; that the document was read to Doña Maria or it was not read to her?

Ans. What I heard said was that the matter there was the basis for a settlement and that would bring her peace and happiness.

Q. When you said in your declaration that the document was read to her, what did you mean to say?

Ans. That the conditions for the settlement of that testamentary proceeding were read to her.

Q. I will call your attention, Don Patricio, to the testimony which you gave in a deposition taken in this case last November because of your illness, in which you in response to a question: Who read it (referring to that private document)? You answered: Lawyer Lopez Landron, he arrived there and said: "I come to bring you peace; I come to bring you happiness." She then inquired whether her brother's inheritance was reservable, and the lawyer answered her: "We have nothing to talk about that, that is our mission here." And afterwards you were asked: Did you hear that document read? And you answered: I did not fix my attention except when she signed. I heard the lawyer say that her sister and brother-in-law had signed. Do you want to make any correction?

Ans. Nothing at all; the only thing that the document referred to was what I have already said. If I used the word "document," it was because my head was suffering at the time.

Q. Do you want to make any explanation with reference to your testimony given upon this former occasion as to whether that document was read to Doña Maria or not?

Ans. What I have to say is this: that the document was not really a document but the basis for that transaction.

Q. Do you know whether any paper was read, whether you call it basis, document or whatever you please? Do you know whether any paper was read to Doña Maria that night?

Ans. I do not know. What I know is what I have stated before.

204 Cross-examination.

(By Mr. PETTINGILL:)

Q. Did I understand you to say that you were seated at a little desk in the ante-sala or in the dining-room?

Ans. Yes, sir.

Q. At a little table?

Ans. Yes, sir; the dining table.

Q. With your back to the partition?

Ans. Yes, sir.

Q. And on your right hand was one of the arches and on your left hand was the other going into the sala?

Ans. At the right there was a door and at the other side there was another door.

Q. And you remained seated there all that time?

Ans. Yes, sir; until they left and then I continued figuring out for Mrs. Rios.

Q. Could you see any of the gentlemen from where you were seated?

Ans. No, sir; just hear them.

Q. Now then how do you know there were only four came there?

Ans. Because I recognized them by the voice.

Q. All four of them?

Ans. Three of them I knew by the voice, not the fourth who was Mr. Landron, whom I simply knew by sight.

Q. Where had you become acquainted by sight with Mr. Landron?

Ans. In Humacao.

Q. Before this time?

Ans. At Humacao passing by a store of a merchant, he pointed him out on that occasion. I do not know him personally but simply by sight.

Q. I have asked you if you knew him by sight before that time.

Ans. Yes, sir; he used to go quite often to Humacao and I saw him.

Q. Didn't you testify in November when you were seen, in answer to the question: "Did you see all those gentleman?" Did you not answer: "I did not see them; I recognized them by their voices; Mr. Francisco Noya, Manuel Argueso, Pepi Cuadra," and then say: "I afterwards heard that Lopez Landron was also there"?

Ans. Yes, sir; I did not recognize him by the voice. I said, because I was told afterwards, that Mr. Landron was one of them.

Q. Then that night you didn't know that Lopez Landron was there?

Ans. By the voice of course I don't know him. I know him by sight. On the following day I saw him and said he was the gentleman who was there last night.

Q. How did you know he was there if you didn't know his voice?

Ans. Because I have heard him before and I was told, there goes Mr. Landron; and so much so that I pointed him out to Lino in the street.

205 Q. When did you point him out to Lino?

Ans. The day following the night that these gentlemen came to the house; about noon.

Q. You never had pointed him out to Lino before that?

Ans. No, sir.

Q. As a matter of fact didn't Doña Maria tell you that one of the gentlemen who came there was Lopez Landron and that was the way you knew?

Ans. No, sir.

Q. Tell us once more how did you know that the fourth man there was Lopez Landron; how did you know it that night?

Ans. On that night, no. That night because I knew him by sight and afterwards everybody told me that is Lopez Landron.

Q. Do I understand you now that you saw him that night?

Ans. No, sir; it was in the street next day.

Q. You have no other explanation of how you knew he was there that night?

Ans. I did not know him; I was not acquainted with him; I simply knew him by sight.

Q. Are you sure there were only four gentlemen who came in that night?

Ans. Only four.

Q. You say you are sure. How are you sure of that?

Ans. Because I didn't hear any more; the voices of the three parties whom I knew and the one I did not know.

Q. What did you hear Argueso say there that you knew his voice?

Ans. They were talking there all together.

Q. What did Argueso say?

Ans. I don't remember.

Q. Did he talk much?

Ans. No, sir; just words.

Q. How long were they there?

Ans. Nearly an hour; over three fourths of an hour.

Q. Was it soon after Mr. Landron came in that he said to Doña Maria: "I come to bring you joy and peace"?

Ans. Almost at the same time. He said our object or view of coming here is what I have already said.

Q. And right away they went to talking about this basis of agreement?

Ans. Yes, sir.

Q. Did they continue talking about this basis during that whole three fourths of an hour?

Ans. Yes, sir; more or less three fourths of an hour.

Q. If there had been two other gentlemen come in and stay there you would have known they were there, would you?

Ans. No, sir.

Q. Then you are only sure that four came and talked. How many came and didn't talk, you don't know?

Ans. I do not know.

206 Q. You say now that you don't know whether Doña Maria signed that basis or not?

Ans. I do not know; I know that the ink-stand was taken there by the little girl, but as to whether she signed or not I do not know because I had my back turned to the parlor.

Q. Before when you were sick, didn't you say you didn't fix your attention upon anything except when she signed?

Ans. The fact that the girl took the ink-stand there. As to whether she signed or not I could not say.

Q. Did you say before that you fixed your attention upon the time when she signed?

Ans. No, sir; because I could not see her sign. I had my back towards them so I could not see them sign.

Q. Now you say Lino was there. What do you call him; Lino what?

Ans. Lino Rivera; yes, sir; right opposite me. I was with my back to the parlor and he was in front of me, more or less, two or three yards from me.

Q. When Doña Maria was there with you, what was Lino doing?

Ans. He was there; he was not doing anything. He was opposite me but he was not doing anything.

Q. I mean now when Doña Maria was there before she went to the parlor and before the gentlemen came in, you and she were making up accounts. What was Lino doing?

Ans. Lino, in view of the fact that he comes in and goes out of the house frequently to make errands, he was standing there.

Q. He had nothing to do with the making up of the accounts?

Ans. No, sir.

Q. Did he remain seated in the same place when Doña Maria went in to receive these gentlemen?

Ans. Yes, sir; he was in the same place.

Q. From where he was sitting did he have a view into the parlor through one of these arches?

Ans. He could see into the parlor but he could not see the parties who were there because that small wall between the two doors prevented him from seeing.

Q. In what part of the parlor were these gentlemen seated?

Ans. It might be in what they call the "estrado," but I could not say positively for I could not see.

Q. If where you are seated represents one of the arches and this chair the other arch, you were seated about where this gentleman is (referring to Stenographer) and here is the wall (referring to the Judge's desk), now with reference to your seat here where was Lino sitting?

Ans. Right opposite me; he could listen but he could not see.

Q. Was he as far away from you as I am from this gentleman?

Ans. About; he was sitting on the floor or a little bench.

207 Q. How wide was this wall or how far apart were these two arches? Indicate. Was it as wide as this table? Something like two yards?

Ans. It may be a little wider.

Q. When did Lino go out?

Ans. A short time; something like half an hour. He left before the gentlemen did.

Q. Did Doña Maria send for the ink-stand before Lino went out?

Ans. Yes, before.

Q. How long after that did Lino stay?

Ans. He left right away.

Q. When you testified when you were sick, did you say anything about Lino being there?

Ans. No, sir; I don't remember.

Q. Didn't you just say that you did not say so?

Ans. I believe so, I don't remember. I cannot deny if he was.

Q. Wasn't the question specifically asked you whether any other

person was there besides Doña Maria and the four gentlemen and did you not positively answer that there were no others?

Ans. I don't remember.

Q. Do you remember what you testified as to who were present at that time?

Ans. What I have just stated.

Q. Do you remember that you didn't say anything about Lino Rivera being there?

Ans. I thought you meant those in the parlor. I understood the question as to who else was in the parlor. If I had understood that it was where I was, I would have said Lino.

Q. What were you doing while Doña Maria was in the parlor?

Ans. Nothing; I was waiting for her to continue; to go on.

Q. Were you and Lino talking together?

Ans. He was telling me what he heard Mr. Landron state. He overheard part of the conversation.

208 Q. Lino was telling you that night?

Ans. Yes, sir.

Q. That is what you were talking about while the gentlemen were in the parlor?

Ans. Yes, sir; after he said to me that he was listening and after that he left.

Q. And didn't you talk about anything else besides the conversation you overheard in the parlor?

Ans. No, sir; only that; the matter in question, and just a portion of it because we could not hear all of it.

Q. You could not hear all that went on in the parlor?

Ans. No, sir; only what I have already said.

Q. To the rest of the conversation you didn't pay any attention?

Ans. No, sir.

Q. At the time of your former examination, did I not ask you the question: "While that conversation was taking place in the parlor, what were you doing?" and did you not answer: "I was waiting for Doña Maria in order to finish the work I was doing"?

Ans. Yes, sir.

Q. Without mentioning anything about talking to Lino or Lino being there for you to talk to?

Ans. No, sir.

Q. Weren't you talking to Lino as well as waiting for Doña Maria?

Ans. Yes, sir; we exchanged words.

Q. Why didn't you tell me that when I asked you that question?

Ans. In the other testimony?

Q. Yes.

Ans. Because I was ill; my health was bad; I was anxious that the testimony be over; I was weak.

Q. Don't you think that your memory was as good then as it is now?

Ans. My memory was all right, but as to my head and my ideas I could not recall them.

Q. Has anyone refreshed your memory by calling these matters to your mind since you last testified?

Ans. No, sir.

Q. No suggestions have been made to you at all?

Ans. No, sir.

Q. Haven't you talked with the Attorneys for Doña Maria since that time?

Ans. Yes, sir; and with herself with regard to the same matter and with several parties.

Q. And for example didn't she suggest to you that certain things occurred that you didn't remember?

Ans. No, sir.

Q. Now you have stated that Pepi Cuadra told Doña Maria the particulars of this agreement.

Ans. Yes, sir.

Q. Did you say that in your former examination?

209 Ans. Yes, sir; that is what I call reading the document. I am not familiar with those things.

Q. At that examination when I asked you the question: "Did you hear any other person say anything with the exception of Lopez Landron and Doña Maria?", did you not reply: "I did not hear anyone else"?

Ans. No, sir; Mr. Pepi Cuadra and Mr. Landron as Attorneys were those who spoke more.

Q. My question is this: If in your examination in November last you did not state that Lopez Landron was the only one who spoke on business matters?

Ans. And Mr. Pepi Cuadra.

Q. Did you say that in November?

Ans. I don't remember whether I mentioned both inasmuch as Mr. Cuadra is the Attorney for Mrs. Maria.

Q. Now, at that examination did you not give a full account of what happened there that evening in the following way: That by their voices you recognized the gentlemen to be Paco Noya, Manuel Argueso, Pepi Cuadra and another one whom you were told afterwards was Lopez Landron; that after they arrived Mr. Lopez Landron commenced by saying: "Doña Maria, I come to bring you happiness and joy in the agreement with your mother; this is a private document. Here is the signature of Mr. Paco Noya and that of Pepita Rios and here is your mother's signature also. You may see that Paco Noya and Pepita have signed. Let us fix all this." That then you heard Mrs. Maria ask Mr. Landron if the inheritance of her brother was reservable and he answered: "Yes" and that she then called the little girl and told her to bring the ink well and when it was brought to her she signed, and that Mr. Lopez Landron further said that the agreement was with the consent of her mother. Now wasn't that your account of the occurrences given in November?

Ans. Yes; but the understanding that the word agreement referred to the basis of that transaction.

Q. Did you at that time say a single word that Pepi Cuadra advised Doña Maria to sign?

Ans. He said to her that she should sign after telling her that Doña Maquela was to come into possession of the usufruct only.

Q. At that former examination did you use the word "usufruct" in any manner?

Ans. I don't remember because as I said before I was very weak.

Q. Who has suggested the word "usufruct" to you?

Ans. Nobody.

Q. What is your understanding of the meaning of the word usufruct?

Q. What I understand by usufruct is that if a property is given to me in usufruct I can only dispose of the rental, not of the property.

Q. Were the gentlemen talking all the time they were in there during this three fourths of an hour or more?

Ans. I don't remember. They talked naturally of course. They were there about half an hour or three fourths of an hour and then they left. Imagine that is a long time since.

210 Q. Were they talking most all the time or was there a long time when they didn't say anything?

Ans. The lawyers were talking as to the basis of the usufruct of the property in the testamentary proceedings.

Q. They talked about usufruct most all the time, didn't they?

Ans. No, sir; it was a private conversation. They bid good-bye to the people.

Q. Do you know Jesus Almiroty?

Ans. No, sir.

Q. You have lived in Humacao all your life and don't know him? (To the Interpreter) Make sure that he understands the name.

Ans. No, sir; I don't know him. Very frequently there are people in town you are not acquainted with.

Q. Humacao is a pretty large city is it?

Ans. Yes, sir; pretty large; it is a city.

Q. Why is it that you remember the particular discussion of usufruct and the two or three sentences that you have told us and don't remember anything more of a half hour's conversation?

Ans. Because they were words that I overheard. Because it was not a matter that interested me I just simply overheard certain words.

Q. Did somebody call your attention to them soon afterwards?

Ans. No, sir; nobody.

Q. Your attention never was called to it from that time up to the time you testified in November, was it?

Ans. No, sir.

Mr. PETTINGILL: That is all.

(By the COURT:)

Q. Ask him if he has told us all that Maria said at that meeting?

Ans. Yes, sir.

Q. Ask him if he was in a position to hear everything that went on there from the time they came until they left?

Ans. No, sir; not all of it, but what I have said.

Q. He only heard part of it then?

Ans. Yes, sir.

Q. If he was there in a position to hear, why didn't he hear all of it?

Ans. Because I didn't have to hear anything else; it was not to my interest to hear all that was said.

211 Q. Where was this declaration in November last in Humacao?

Ans. In Cabrera Street; at the house of Mr. Zeno Jenori.

Q. Where were you living at the time?

Ans. Right there; sick.

Q. How long had you been sick there?

Ans. Something like two months; afterwards I left for Manati.

Q. Were you able to walk about?

Ans. No, sir; I was carried in a carriage crossways. I was very weak.

Q. While you were there in the house, were you in bed or were you able to walk about?

Ans. The next day after I came to the house I was taken with the grippe. I intended to teach some lessons to the children, but the doctor prevented me from doing it. Right then I was attacked with the grippe and suffered with the fever.

Q. Do you remember who took your testimony or declaration as Attorney for Doña Maria on that occasion?

Ans. The lawyers were Mr. Viaz Ochoteco and another Attorney who called there.

Q. Do you know who the other Attorney was?

Ans. No, sir; I don't remember.

Mr. PETTINGILL: It is admitted that it was Mr. José Hernandez.

Q. Did you give your declaration according to your recollection at that time?

Ans. Yes, sir; at least what I could remember because I was very weak.

Q. When you were asked if there were any other gentlemen there, to whom did you refer when you answered: "No one else"? Did you refer to just the gentlemen in the parlor or in the whole house?

Ans. In the parlor.

Q. How wide are that parlor and the dining room or back parlor?

Ans. About this space square (indicating.)

Q. The width I am speaking of. Was it as wide as from where you are to this table?

Ans. The width of the parlor is from where I am to where that gentleman is (referring to Mr. Hernandez Lopez) and the length is greater.

212 Q. About six yards wide?

Ans. Something like that; in order to find out you would *would* have to measure it.

Q. And this partition that separated the back parlor from the front parlor, you said there were two arches in it?

Ans. Two doors with a half circle above; with grill work on top.

Q. About how much of that entire partition was taken up by these arches? (Showing witness a diagram). Is this something like the idea, this the partition and these the arches?

Ans. Yes, sir.

Q. About how much of that partition was taken up by the space of those arches; about how much, more or less? The opening of those doors, more or less?

Ans. Each door was a yard and a half wide, more or less.

Q. Since this conversation there in the house that night, you say that you have talked to various people about it?

Ans. No, sir.

Q. When you were asked by the gentleman a few moments ago whether you had spoken to the attorneys or anybody since the testimony, you said that you had.

Ans. I could not speak to anybody, after that time I went to Manati.

Q. From the time of this conversation in Doña Maria's house and up to the time this deposition was taken, did you talk to anybody about what happened in Doña Maria's house that night?

Ans. No, sir.

Q. What fixed in your mind what you heard there that night, as you have testified here?

Ans. Because it is such a simple matter that you cannot forget. It was simply four or five words.

Q. Were you giving your attention to what one person said, rather than another?

Ans. No, sir.

Q. How old are you?

Ans. Fifty-eight.

Witness retires.

Mr. DEXTER: Complainant now offers in evidence a certified copy of the proceedings or suit instituted by Maria Rios against Manuela Gutman and Petronila Patricia Rios, in the District Court of Humacao, for the purpose of setting aside this "*expediente dominio,*" which was filed December 10, 1901, and for the purpose of nullifying that private contract, a certified translation having been attached as Exhibit D to the pleas of defendants. It is offered
213 for the purpose of showing that in this suit, which was brought by Doña Maria in the District Court of Humacao for the purpose of setting aside those dominion proceedings and cancelling the private contract, that the same Attorney, who, according to the testimony in this case, pretended to represent her and upon whose recommendations and representations she signed that contract, was the Attorney on the other side in the subsequent case in the District Court of Humacao. This suit was filed by Maria Rios by her Attorney Juan Viaz Ochoteco. I offer in this connection also

the answer filed by José Maria Cuadra, Attorney for Petronila Patricia Rios de Noya.

Mr. DEXTER: Complainant also offers in evidence the petition or pleading presented by the Attorney José Maria Cuadra in the dominion proceedings on the 29th day of July, 1901, withdrawing from that proceeding as Attorney for the complainant Doña Maria Rios.

Mr. DEXTER: Complainant also offers in evidence the declaration of the District Court of Humacao, dated November 16, 1901, declaring the dominion title to be in Manuela Gutman; to show that Cuadra started these proceedings.

Mr. DEXTER: I now offer a certificate of the Secretary of the District Court of Humacao, which contains a copy of the petition filed by José Maria Cuadra, which appears to be dated on the 22nd
214 day of January, 1901. This is to show that, notwithstanding the instructions of Doña Maria, who testified that she had employed him simply in the testamentary proceedings, he instituted these proceedings.

Mr. PETTINGILL: That is objected to on the ground that it is a great deal of evidence to show little matter. We claim that he was authorized to start it.

Mr. DEXTER: We want to show what his misconduct consisted of; that he proceeded in the face of protests, to bring this suit.

Complainant also claims that, notwithstanding whether the private contract was fraudulently executed as we allege and misrepresentations were made, that still it could not have transferred the title to Doña Manuela Gutman, which she claims and which these defendants are claiming under her, and that the dominion proceedings were not matters of which the Humacao Court had jurisdiction, so there are two branches of the case.

Complainant now stands before this Court of Equity asking not only that the private contract be annulled, but that the expediente proceedings be annulled. If Your Honor did not think there was sufficient evidence to cancel that private contract, then, on the other hand, we would have the other issue remaining as to whether or not the title was devised out of my client by the "*expediente dominio.*" So I claim the right, on behalf of my client, to present the whole case, and Your Honor will determine at the end of the case whether we have made out a case on one or both points.

Mr. PETTINGILL: We object to the right of complainant to go into the other points of the case until he has laid a foundation of fraud to vacate the family settlement. Counsel has had called as witnesses three persons who were present that night and several other gentlemen who were not there that night and he does not see fit to put on the stand the other three gentlemen who were present at the meeting that night.

Mr. DEXTER: Your client.

Mr. PETTINGILL: It doesn't matter whether he is my client or who he is. Here is the complainant herself and she has put two family servants, peons, upon the stand to support her testimony, and here

are two gentlemen of the community who were there that night, and yet Counsel does not call them as witnesses.

215 Mr. DEXTER: If ultimately or if now, Your Honor's conscience or sense of equity should compel you to decide this case against the Complainant, it would be a source of great satisfaction to me to have this order entered.

The COURT: Do I understand you close on that branch of the case?

Mr. DEXTER: That is all the testimony I have to offer on that branch.

I propose now to offer in evidence in behalf of complainant the proceedings in the District Court of Humacao in the dominion proceedings, so-called, for the purpose of showing that that Court was without jurisdiction to render any judgment or decree by which the title of complainant in the inheritance of her father or brother should be devised out of her and declared or vested in Manuela Gutman, her mother; that such proceedings were not good process of law for that purpose.

I further propose to offer testamentary evidence and witnesses attempting to show fraud and collusion of the defendants with reference to the subsequent transfer of the property from Manuela Gutman to Victor Burset and from Victor Burset to Santiago R. Palmer and from him to defendants Garzot & Fuertes.

The COURT: What is Burset's Answer?

Mr. DEXTER: That he purchased for value and that the motive which actuated the matter of these quarrels was that she wanted to go to Spain and didn't want to leave the property behind.

Complainant further offers to prove that these transfers were all made contemporaneously or very near the time when the first suit was brought in the District Court of Humacao to nullify that private contract and the dominion proceedings, the effect of which was to nullify any verdict which might be rendered in favor of complainant.

The COURT: Complainant's Counsel, in open court, announces the closing of the testimony as to the allegations of fraud in the execution of the private contract on the 16th of January, 1901, and asks leave to proceed before the decision of the Court on that branch of the case, to the question of jurisdiction of subsequent proceedings in the District Court of Humacao, and also the consideration of evidence bearing on the charge of fraudulent conveyances by Manuela Gutman to Victor Burset and by Victor Burset to Palmer. The Court thereupon allows complainant to proceed to the other branches of the case, to which Counsel for the defendants excepts.

216 Upon the announcement of Counsel for the complainant that he had closed the testimony on the question of fraud on the night of the signing of the private agreement, January 16, 1901, Counsel for the defendants moved the Court for permission to controvert the evidence of complainant and to introduce testimony in their behalf on that question before complainant was permitted to proceed to introduce proof upon the other branches of the case.

Mr. DEXTER: Complainant is most decidedly opposed to any such

procedure and challenges Counsel on the other side to produce authorities to substantiate it.

Mr. PETINGILL: I ask until tomorrow morning to produce authorities to substantiate the position I take.

The COURT: I do not desire to interfere with the Counsel in the manner in which they desire to present their case.

Mr. DEXTER: Complainant now offers in evidence a certified copy issued by the Secretary of the District Court of Humacao of the petition filed by the Attorney José Maria Cuadra on behalf of Maria Rios and Doña Petronila Rios, together with a translation thereof.

The COURT: We are introducing a great many matters here which are admitted in the answers.

Mr. DEXTER: But the process of law depends upon the petition, the service and the decree.

Complainant now offers in evidence Exhibit D filed by defendants, containing a copy of the petition filed by Juan Viaz Ochoteco, in the name of Maria Rios, complainant in this case, in the District Court of Humacao, against Doña Manuela Gutman and Doña Petronila Noya for the nullity of the private contract of January 16, 1901, and also the answer filed thereto by José Maria Cuadra, acting as Attorney for Petronila Noya.

217 (The document is admitted in evidence and marked: Exhibit E for complainant.)

Mr. PETINGILL: Counsel for defendants admit that a suit was instituted in the District Court of Humacao, by petition dated December 10, 1901, filed by Don Juan Viaz Ochoteco, Attorney for Doña Maria Rios, against Doña Manuela Gutman and Doña Petronila Noya for the cancellation of a private contract of January 16, 1901, and of the declaration of dominion; also of the filing of an answer to that petition by Don José Maria Cuadra, acting as Attorney for Doña Petronila Rios de Noya.

Mr. DEXTER: Complainant offers in evidence the certified copy of the Secretary of the District Court of Humacao containing the petition filed by Don José Maria Cuadra in the name of Maria Rios and Petronila Noya; and also of the Attorney Don Rafael Lopez Landron for the declaration of dominion of several properties therein described, in favor of Manuela Gutman, also the petition or pleading of Don Juan F. Viaz Ochoteco, Attorney for Doña Maria Rios, filed in the same proceeding in opposition thereto.

218 EXHIBIT "E" FOR THE COMPLAINANT.

I, Att'y Enrique Lloreda Casabó, secretary of the District Court of Humacao,

Hereby certify: That in the proceedings instituted by Mrs. María Rios, widow of Rubio, against Mrs. Manuela Gutman, widow of Bustelo and Mrs. Petronila Patricia Rios de Noya, about the nullity of a private contract, and by Mrs. Petronila Patricia Rios de Noya against Mrs. Maria Rios, widow of Rubio, about the division of community of goods, there exists the following documents:

Complaint of Juan Vias.

To the Court:

Juan R. Vias Ochoteco, lawyer, in the name of Mrs. Maria Rios, widow of Rubio, of age, property owner and resident of this city, appears before the court and in compliance with law, I state:

That my client, being desirous of putting a stop to the continuance of the undivided estate, in which are found the goods and property left at the death of her father Mr. José Maria Rios, the judicial testamentary proceedings of which, through the wily machinations of his widow Mrs. Manuela Gutman, appeared interminable, and had lasted already a quarter of a century, accepted the proposition to enter into an arrangement in a friendly manner in respect to the property and goods which might be adjudicated to the person who gave her berth as an heir *ad*intestate of her son of the first marriage, Mr. José Maria Rios y Gutman: inasmuch as in carrying out the liquidation of the property acquired after the marriage, she should receive nothing on that account, in consequence of the bad administration of the property left and of its daily prodigalities which reduced the hereditary assets to a sum inferior to what they brought before the marriage belonging to the first husband, Mr. José María Rios y Berrios; there inter-
219 ferred in the testamentary arrangement above mentioned two lawyers, one representing the widow Mrs. Manuela Gutman, and another representing her children of her first marriage, Mrs. Maria and Mrs. Petronila Patricia; and instead of declaring in a public deed the result of their agreement, as it is provided by law, inasmuch as it involves a ces-ion of the hereditary rights, inserting in the said deed the precise clauses to make appear the condition of the reserved property adjudicated to Mrs. Manuela, they drew up a simple private contract without any validity or power; and as if this were not enough they leave unfulfilled all the obligations freely contracted by this lady, who, being badly accustomed to administrate the goods of other people, appurtenances, etc., wasting its products, believes that it is lawful to keep in internal guardianship his children of her first marriage, already emancipated, in order to create a benefit by it for her children begotten during her second matrimony with Mr. Miguel Antonio Bustelo.

It is not possible Honorable Judges, that such a state of things can be perpetuated, because it — a manifest mockery of justice and of law; and therefore, being encouraged by the rectitude of the cause which I defend, I appear before you to institute this suit, by exercising the action of nullity of private contract upon the transactions of hereditary rights, made on the 16th of January last, between my client and her mother Mrs. Manuela Gutman and her sister Mrs. Petronila, praying also for the nullity of the "expediente de dominio" instituted by the attorneys for the parties, which is a consequence of said contract, and the nullity besides of the registration

of the said "Expediente," which has been done, or may
220 be done in the respective Registry of Property.

In order to meet the improbable case that the intended nullities may not prosper, I bring at once as subsidiary action a motion for re-cis-ion of the aforesaid contract, on account of non-ful*l*fillment on the part of Mrs. Manuela Gutman and Mrs. Petronila Rios, of the obligations which they contracted, and the consequent annul-ation of the "Expediente de Dominio" and registrations to which I have referred previously.

Therefore, making use of said action of nullity and the subsidiary action of re-cis-ion mentioned above, I institute this ordinary suit against Mrs. Manuela Gutman, widow of Bustelo, who is of age, proprietress and resident of San Juan, and against Mrs. Petronila Patricia Rios y Gutman, attended by her spouse Mr. Francisco Noyas, both of age, proprietress, and of this vicinity, basing it on the following facts and foundations of law.

Facts.

1. Mrs. Manuela Gutman, widow of Bustelo, at the death of her first husband, Mr. José María Rios y Berrios, began before the late "Juzgado de Primera Instancia" (Court of First Instance) of this city, the proper voluntary proceedings of the probation of the will for the purpose of distributing conveniently and equitably the hereditary property between the plaintiff and her three children born in her marriage with the said gentleman, called Mr. José Maria, Maria and Petronila.

2. The "Expediente" followed the due course of law, and the means employed by the said Mrs. Gutman in order to create difficulties for the last and definitive settlement of the probation of the will, were so many and so varied that in spite of there having transpired more than a quarter of a century this "expediente" is yet in the period of inventory, and that lady has not yet given bond or
221 guaranty for the faithful fulfillment of her charge in the administration of the property left at the death of her late husband.

3. While the above testamentary proceedings were in course of settlement, Mrs. Gutman married the second time Mr. Miguel Antonio Bustelo, a judge who had jurisdiction over this case; and in this new matrimony Mrs. Manuela begot five children: Carolina, Isabel, Sara, Miguel and Manuel.

4. When the death of Mr. José Maria Rios y Gutman, one of the children of the first marriage, took place with Mr. Rios y Berrios, his legitimate mother, Mrs. Manuela, instituted the opportune declarative proceeding of heirship of *ad intesto*, because he had died without making a will, and without leaving legitimate offspring, and the Court of First Instance by decree of the 20th of April, one thousand, eight hundred and ninety two, so declared, said lady coming to acquire in the inheritance of her dead first husband as legitimate ascendant, the proportional part of the son from whom she inherited.

5. The other two daughters of Mr. Rios, named Maria and Petronila, being emancipated by law, on accounting of having arrived at the state of age, and having contracted marriage, continued nevertheless, subject to the vexatio-s guardianship of their mother, Mrs. Manuela Gutman, being deprived absolutely of the power of disposing of their property and without receiving any account of the administration of the property which belonged to them, being compelled to live on the small sum of eighty two dollars monthly, which their ambitious mother would give them for food.

6. During the disastrous administration of Mrs. Gutman, the property belonging to Mr. Rios suffered such tremendous losses that now it scarcely covers the capital which the husband brought
222 to the marriage union, one of the facts which clearly proves the little interest taken by this mother in defence of the rights of her daughters, being the circumstance of her allowing to be sold at auction for the payment of the fees of the testamentary proceedings, forty cuerdas of superior quality of land, located in the very center of the hacienda, called "Las Mulas," precisely at the time when she had cash sufficient to pay for these expenses, because she had collected a few days previously from her son-in-law, Mr. Ricardo Rubio by way of rents of one of the properties comprised in the heritage, the big sum of two thousand, six hundred pesos, P. R. Currency. The forty cuerdas so sold came to be soon afterwards the property of the daughters of the second marriage of Mrs. Manuela Gutman.

7. Such a state of things is unbearable; Mrs. Maria and Petronila had numerous children to whose maintenance and education they had to attend; and hence they recommended to the attorney Mr. José María Cuadra, the steps necessary to institute such proceedings as might be pertinent to the said testamentary proceedings of Mr. Rios y Berrios; and hardly had these steps been taken, the attorney of San Juan, Rafael Lopez Landron in the name and in representation of Mrs. Manuela Gutman, proposed a settlement consisting in determining the properties which had to be adjudicated to each one of the participants, with the absurd pretension that they must not have the appearance or character of reserved property such as was to be adjudicated to the daughters of her first marriage, such properties as might be delivered to his client through inheritance from her son of the same marriage, named José Maria.

8. My client never accepted such a ridiculous pretention from her mother, and she only acceded to the fact that there should be assigned to her the property of Naguabo which is of the
223 greatest value of the inheritance, with the character and condition which they might have in accordance with law; at the same time relieving her of rendering proved and complete accounts of the immense prodigalities occasioned by the losses and partial loss of the capital, which on account of its importance and quality should have experienced a notable increase.

9. Under these bases, and always with the negative on the part of my client to use her right which should not be lost to the prejudice

of her innocent children, there was drawn up a private settlement, in which, without there being specified, as it should have been, the true title of acquisition on the part of Mrs. Manuela, there is only said that the properties of Naguabo shall be retained by said lady, as coming from the property left by her first husband, said Mr. José Rios y Berrios, there being stated besides that each adjudicating grantor shall become an exclusive owner of his or her property without any reservation or limitation of any kind.

Tenth. By clause 5 of the aforesaid private and inefficacious contract of transaction, which we have been considering, there is determined that once the transaction has been signed before witnesses by the contracting parties, they shall make it a public instrument within the term of forty-eight hours subsequent to the day of its date, or as soon as the notary of this locality returns to his office, and neither Manuela Gutman nor Petronila Rios de Noya have fulfilled this obligation imposed in the contract in spite of the fact that the notary, Antonio de Aldrey, was asked to draw up the opportune notarial document.

224 Eleventh. So far from granting that deed which was essential for the efficacy of the contract of transaction made, the attorneys, Rafael Lopez Landron and José Maria Cuadra, without the latter having the consent of his former client, Maria Rios, against the provisions of the Mortgage Law, which only in the absence of a written title authorizes the proof of judicial dominion, institute an expediente of dominion in every way unreasonable, because there exists perfect titles of dominion; and in the petition of said expediente there is alleged as a title of acquisition the title of transaction instead of a heriditary title, doubtless for the purpose of leaving involved in darkness the reserved character of the property, which was adjudicated to her as heir of her late son José Maria.

Twelfth. The form ably employed in the private contract as well as in the *expediente of dominio,* in order to unite different ways of thinking, inducing the contracting parties into error, did not convince in any way my client, and therefore availing herself of her right which cannot be denied to her, she withdrew the powers of attorney from her lawyer, in whom, an an evil hour, she had confided her defence, without prejudicing the right to make him responsible for his conduct; and in the expediente of dominion she took such measures as she thought convenient to safeguard her menaced interests.

Thirteenth. By the first clause of the private contract of transaction, so many times cited, Manuela Gutman bound herself to deliver to her daughters of the first marriage, named: Maria Guadalupe Rios, widow of Rubio, and Petronila Patricia Rios de Noya, all the lands which compose now the estate called "San José de
225 las Mulas"; and so far from having so done she continues in possession of said estate as the owner thereof, collecting from my client the opportune rents according to an agreement which they had made in former times.

Fourteenth. Also by clause two of the same contract Manuela

Gutman bound herself likewise to deliver immediately to her said daughters all the lands which comprise the farm "Culo Prieto," in the District of Naguabo; and neither was this delivery carried out up to the present, notwithstanding the fact that Maria had brought suit of conciliation with such an object in view against said Manuela, at which act defendant did not even put in an appearance.

To all these acts the following foundations of law are applicable:

First. All acts executed against the provisions of the law are null and void, save the cases in which the same law ordains its validity, (Article 4 of the Civil Code.)

Second. There must appear in public instruments: (1) The acts and contracts which have for their object the creation and transmission, modification or extinction of real rights upon real estate. (2) The cession, repudiation and renunciation of heriditary rights or those of matrimonial union. (3) The cession of rights or actions proceeding from an act recorded in a public instrument. (Article 1280 of the Civil Code.)

Third. The nullity of the contracts may be carried out by the parties who are principally or secondarily bound by them. (Article 1302 of the same Code.)

Fourth. Once the nullity of an obligation has been declared, the contracting parties must have reciprocal restitution of the things which have been the matter of contract, (Article 1303). As a consequence of what is stated above, all the property comprised in the private contract of transaction, the nullity of which we ask,
226 should return to the heriditary mass until they be adjudicated to the participants in accordance with law.

Fifth. The principle of civil law: *Quod ab initio nullum est, tractu tempore convalescere non potest.*

Sixth. The registration does not confirm the acts or contracts which may be null and void according to law. (Article 33, Mortgage Law.)

Seventh. The power of resolving the obligations is understood to be implicit in the reciprocal obligations in case one of the parties did not fulfill what was incumbent on him. The prejudiced party may choose between demanding the fulfillment or the resolution of the obligation with the payment of damages and interests in both cases. (Article 1124, Civil Code.)

Eighth. The validity and fulfillment of the contracts cannot be left at the will of one of the contracting parties. (Article 1256.)

Ninth. The contracts validly made may be rescinded in the cases established by law. (Article 1290.)

Tenth. Amongst others, the contracts in the cases specially determined by law are rescindable. (Article 1291 No. 5.)

Eleventh. The hard headed litigant must be condemned to pay costs.

In view of the above stated reasons, we pray to the Court praying to accept this writing with its copies and to accept me as a party in the name of my client for whom I appear, and to admit this suit, ordering it to be filed in accordance with General Order No. 118,

citing and summoning the defendants in order that within
227 the term of twenty days they may appear to answer it if it suits them, and in due time to render sentence declaring null and void, of no value or effect, the private contract of transaction of heriditary rights of the 16th of January last, to which I refer in the body of this writing; to render also null and void the expediente of dominion instituted for the purpose of recording the pieces of property adjudicated in virtue of said transaction; and likewise to render null and void the registrations which may have been recorded or which may be recorded together with the testimony which may be issued of the final approving decree in said expediente. And for the improbable case that the alleged nullities may not be ordered, the court will be pleased to declare rescinded and of no obligation for the parties the above mentioned private contract, ordering that the property, which is the object of this transaction may again be considered as an integral part of the hereditary possessions, undivided, left at the death of Mr. José Rios y Barrios with the consequent nullity of the expediente of dominion instituted as a consequence of said transaction, and of the registrations which from the same expediente may have been recorded in the registry, with the opportune condemnation to indemnify for damages on the part of the defendants, and in all cases payment of the costs of the suit; for so it is in accordance with justice which I ask at Humacao, on the 10th of December, 1901.

Item. In accordance with Article 88 of the Regulations of the Mortgage Law now in force, the judges and courts, before whom the nullity of registration is asked, shall notify the respective registrar of property in order to apply the marginal note in accordance with Paragraph 2 of the above mentioned Article.

228 This proce*d*ding is of a very urgent character if it has to serve the ends asked for and to leave in safeguard the interests of my client menaced by a simulated alienation, which defendant Manuela may carry out if she can obtain the registration of the pieces of property adjudicated to her in virtue of the expediente of dominion instituted, and which p*o*ice of property are the following:

A. A farm known by the name of "Islote" or "Islote Rivalta," composed of one hundred and fifty cuerdas of land, of first quality, equivalent to fifty eight hectares, ninety-six areas, situated in the barrio of Rio Abajo, District of Naguabo; being bounded on the north by the branch called Rio Viejo, which separates it from the lands of Mr. Juan Busó, to day Juan Garzot; on the east by the same branch called Rio Viejo, which separates it from the lands of Orcado Ramirez and Manuela Gutman, widow of Bustelo, as far as the confluence of this branch of the river with the Rio Blanco, situated in the barrio of Rio Abajo, of the District of Naguabo, bounded on the north by the branch called Rio Viejo, which separates it from the lands of Juan Busó, now Juan Garzot; on the east by the same branch, called Rio Viejo which separates it from the (fence) Cercado Ramirez belonging to Manuela Gutman, widow of Bustelo, as far as the confluence of this branch of the river with the modern Rio Blanco; on the South, b*u* the modern Rio Blanco, which separates

it from other lands of Pilar Ojea, to-day his assigns; and on the west, by lands of Cristino Lebron and of the heirs of Ramón Arguezo, from a bamboo clump to the shore of the Rio Blanco as far as the confluence of a ditch with the already mentioned branch of Rio Viejo.

B. Another farm contiguous to the foregoing, known by the name of the fence Ramirez, composed of three hundred and fifty
229 cuerdas and five hundred and thirty five thousandths, equivalent to one hundred and thirty seven hectares, seventy-seven areas of first class land, in its major part, situated in the same barrio of Rio Abajo; being bounded on the North by lands of Juan Busó, and others named San Francisco, which formerly belonged to Poncio Buzó;on the east by José Perez Villamil, to-day Prudencio Barriola, there being a ditch in the middle, formerly Francisco Buzo, by lands of Juan R. Garzot and Ramón Villamil formerly Francsico Busó, up to near the mouth of the Rio Blanco; on the south by the Rio Blanco which separates it from José del Carmen Borges and Prudencia Barriola and from the farm called los Puentes, belonging to Manuela Gutman, widow of Bustelo; on the east by the Rio Blanco which separates it from the farm called "Madama Duran," which belongs to Manuela Gutman, and from lands of Manuela Argueso, formerly Pedro Lebron, and also by part of the branch called Rio Viejo, which separates it from the Cercado (fence) del Islote, known as Rivalta, belonging to Manuela Gutman.

C. Another piece of land called "Madama Duran," composed of a hundred and seven cuerdas and four hundred and sixty eight thousandths, equivalent to forty-two hectares and twenty four ares, of plain and hilly land, situated in the same barrio of Rio Abajo, District of Naguabo; bounded on the north by the Rio Blanco, which separates it from the Cercado Ramirez, belonging to Manuela Gutman, and by parts of land of the heirs of Ramón Argueso, formerly Pedro Lebron, on the west by the same Rio Blanco, which separates it from the Cercado Ramires and by parts of land of Juan Buzo; on the south by lands of Juan Buzo; and on the West by lands of the heirs of Ramon Argueso, formerly Pedro Lebron.

D. Another farm called "Los Puentes," situated in the barrio of the same name, barrio of Rio Abajo, District of Naguabo, composed of thirty six cuerdas and two hundred and twenty-six thousandths, equivalent to fourteen hectares, twenty three areas, of level
230 land in its major part, crossed by a road, bounded on the north by lands of Juan Buzo and the Rio Blanco, which separates it from the Cercado Ramirez of Manuela Gutman; on the East by the same Rio Blanco, the dividing line of the same Cercado Ramirez, and lands of Francisco Buzo; on the south by lands of Francisco Buzo joining the river Anton Ruiz; and on the west by lands of Juan Buzó, joining or forming an angle with the same river, Anton Ruiz.

E. Another farm known by the name of cercado de Torres and also by "Maizales," composed of two hundred and twenty-three cuerdas and one hundred and forty thousandths, equivalent to eighty seven hectares, seven hundred and twelve areas, of first class land

and highlands, situated in the barrio of Rio Abajo, District of Naguabo; bounded on the north and east by lands of Jesus R. Pereyó, formerly Esteban Garriga; on the South by the farm called "Islote Quiñones," which separates it from the river, and besides by lands of the heirs Rios y Berrios; by the Rio Blanco through the middle, and on the west by the Rio Blanco, which separates it partly from lands of Arturo Gallart, and Ramon Villamil, and the remainder by lands of Marcelino Borges and Ramon Villamil, formerly Eladio Saldaña.

F. Another farm known by the name of "Cercado Maldonado," situated in the same barrio of Rio Abajo, District of Naguabo, composed of thirty five cuerdas and one hundred and ninety thousandths, equivalent to thirteen hectares and eight hundren and thirty two areas of low land; bounded on the north by lands of Jesus Pereyó, formerly Rodulfo Maldonado; on the east by a little brook which separates it from the lands of Jesus L. Pereyó, formerly Maldonado, and by the Rio Viejo which separates it from the lands of the heirs of Ramon Argueso, formerly Cecilio Rodriguez; on the south by the Rio Viejo which separates them from the farm "Islote Quiñonez" of Manuela Gutman; and on the west by a brook which separates tho lands from the Cercado Torres belonging to the same Señora
231 Gutman.

G. Another farm know by the name of Islote Quiñonez, situated in the barrio of Rio Abajo, District of Naguabo, composed of eighty eight cuerdas and ninety five thousandths, equivalent to thirty four hectares and six hundred twenty eight areas, of low land, bounded on the North by the Rio Viejo, which separates it from the Cercado Maldonado and from the Cercado de Torres, belonging to Manuela Gutman; on the east by lands of the heirs of Ramon Argueso, formerly Cecilio Rodriguez, and now Carmen Fuertes; on the south by the Rio Blanco which separates it from the lands of the heirs of José Rios y Berrios; on the West by the same Rio, the estate "Mules" and the Cercado Torres.

As the pieces of land belonging to Manuela Gutman have been described at the margin of which registrations there must be written the note of nullity, to which I have referred above, there can be no doubt that in accordance with the precept contained in Article 460 of the Law of Civil Procedure and aided by the illustrious opinion of the Commentator Señor Manreza, the suit of nullity which I establish as a principal action by means of this writing for the purpose of its being admitted without fulfilling the previous requisite of the Act of Conciliation, and consequently by the irrefutable reasons above stated, is of an urgent character.

I appeal to the Court praying that it may be pleased to order the issuance of the opportune notice to the Registrar of property of this District, informing him of the suit of nullity asked for, affecting the registrations which he may have carried out or may carry out in virtue of the expediente of dominion, relative to the piece of property above described, the Court abstaining from taking action
232 in regard to the principal and other items of the present writing, until there be presented a certification of the act of concil-ation which will be tried in due form.

Another Item: Having facts to bring forward, I pray the Court in its due time it may be pleased to bring this case to trial, by appointing a day and hour for the appearance of the parties in regard to the proposition of proofs.

Another Item: In accordance with the provision of Rule 70 of General Order No. 118, I shall present the documents which I intend to avail myself of in this suit at the act of appearance above mentioned.

(S'g'd) JUAN F. VIAS, *Attorney.*

Answer to Complaint.

To the Court:

I, José Maria Cuadra,, Attorney, in the name and representation of Petronila Patricia Rios de Noya, married and a resident of this City, accompanied by her legitimate husband Francisco Noya, appear before the Court in pursuance of the summons which have been served on him in regard to the suit brought against my client and her legitimate mother Manuela Gutman, widow of Bustelo, by the attorney Juan Vias Ochoteco in the name of Maria Rios, widow of Rubio, about nullity of a private contract of transaction made and signed by said women, nullity of the expediente of dominion instituted at their instance, and registration which may have been made or may be made of said expediente in the registry of property, and subsidiarily about recision of the same on account of its nonfulfillment, with the consequent annulment of the expediente and of its registration, in accordance with legal procedure, state and declare:

That nothing is so foolhardy and unjust as the pretension on the part of the plaintiff to the reasons which prove nothing on
233 their behalf, that the Court will be pleased to quash the suit, imposing on the complainant perpetual silence and costs, and condemning her at the same time to convert into public instrument said private contract of transaction made on the 16th of January of last year between my client, her mother, Manuela Gutman, and the plaintiff Maria Rios, widow of Rubio, because she is bound to it through the proper course of law, for which she should be admonished.

In order to proceed with clearness, I shall establish separately the facts and foundations of law which have to serve as a basis for the impugnation of the principal suit, and th-se which have reference to the convention, which I shall opportunely formulate.

Facts in Replication to the Suit.

First. I accept entirely those which figure in the suit in numbers 1, 2, 3, 4, 5, and 6.

Second. *A* also accept the 7th, but I want to state clearly and especially that whilst the attorney Rafael Lopez Landron was the attorney and director of Maria Rios, widow of Rubio, and the transaction being proposed by him in the name and representation of

Manuela Gutman, widow of Bustelo, it was accepted and signed by the same Maria in the same terms to which it is couched in the document of transaction referred to by the opposing party.

Third. My former client Maria Rios, widow of Rubio, accepted said transaction about which she had been sufficiently informed by her former attorney, in the same manner as her sister and co-litigant, Petronila Patricia Rios de Noya, without any reservation or limitation of any kind; and therefore agreeing and accepting the portion of property which had been adjudicated to them in said document of transaction, revering and respecting the other portions which were adjudicated to the other participants in full dominion.

Fourth. When the transaction, in the terms in which it
234 was agreed upon, had been read wholly to the same Maria Rios, widow of Rubio, in the same way in which it was read to the other contracting parties, Petronila Patricia Rios de Noya and Manuela Gutman, widow of Bustelo; and after reading it herself, she accepted it and assigned it freely and spontaneously without any hesitation, that is to say, without stating any reservation of law which might belong to her.

Fifth. It is natural and reasonable that she should accept the transaction agreed upon without reservations or limitations of any kind, from the moment that by this means an end was put to the voluntary proceedings arising from the will of José Rios y Berrios; their pending differences were settled, together with the respective pretentions for the distribution of the property existing, derived from the hereditary possessions which were left at the death of Jose Rios y Berrios. For this reason, that is to say, because they settled their respective rights which they had in the property of the hereditary possessions, Manuela Gutman appears relieved from the obligation of rendering the accounts of administration of the property of the inheritance; for the same reason also Manuela Gutman renounces her right to the profits that arose during her marriage with the first husband, which might belong to her in the property of the possessions, there being no such renunciation expressed or stated in the private document of transaction; in the same way there is no express mention made of the renunciation of her right to the usufruct of the property which she inherited as intestate from her son José Rios y Gutman; nor is there any special mention made of the prodigalities which the opposing parties attribute to Manuela Gutman; but on the contrary they show their conformity with the explanatory memorial of the inconveniences, difficulties and
235 vicissitudes through which those possessions passed whilst Mrs. Gutman, widow of Bustelo, was administratrix.

Sixth. It is certain that by clause 5 of the private agreement of transaction, the contracting parties bind themselves to make it a public instrument. We insist that the imposing parties should abide by the agreement of the transaction, the nullity of which she solicits; and in the fulfillment of this express obligation of the contract, and which exists without any special mention through the ministry of the law, the undersigned attorney asked the notary of this city, Antonio de Aldrey y Montolió, to fill that formality; and when

things were in this state, the notary drew up the proper deed, which up to the present has not been signed because the same Maria Rios, widow of Rubio, has been the only one who has unjustly, obstinately and with temerity refused to sign it, thus trampling on the foot the terms in which the transaction was specially agreed upon.

Seventh. Notwithstanding the fact that Maria Rios, widow of Rubio, had refused to sign the deed of transaction agreed upon, a requisite which is not necessary for its legal efficacy, as it is regretfully believed by the attorney on the other side, the attorney Rafael Lopez Landron and the undersigned attorney, the latter with the consent of his former client, Maria Rios, widow of Rubio, and of Petronila Patricia Rios de Noya, who had been previously informed by said attorney instituted an expediente of dominion in use of the powers which were conferred upon him by the contracting parties, his respective clients, because they considered it as the most rapid way and most economical means for the interests of his clients, and in this same expediente is invoked as a title of dominion, the nearest, the most immediate, to wit: the transaction agreed upon, as a quick way of acquiring the dominion of the portion of the property adjudicated in the transaction.

236 Eighth. When the private document of transaction had been wholly read by the same Maria Rios, widow of Rubio, she signed it without scruple of any kind, and therefore it cannot be called an error or deceit in regard to the form or clear terms previously ceded by her, in which it was drawn up, but being carried away by strange opinions, she withdrew from me her representation in use of her perfect right, without prejudice to call me to account for the responsibilities of the case, as stated by her present attorney; in order to take such steps within the expediente of dominion as might prove conducive to the defense of her interests.

Ninth. By clause 1 of the private contract or transaction Manuela Gutman, widow of Bustelo, bound herself to make immediate delivery to her daughters, Maria and Petronila Patricia Rios de Noya, of the lands and appurtenances that comprise the estate called "San José de las Mulas," District of Humacao, besides forty cuerdas which are found in it and which were adjudicated by public auction to the heirs of Bustelo, to whom they belong now, as well as all the lands which comprise the estate "Culo Prieto" of the District of Naguabo; and up to the present time Manuela Gutman has not been able to carry out the delivery of these lands in regard to this party. And for these reasons, this party declining, as it declines, all responsibility in said Mrs. Gutman, widow of Bustelo, the only person directly obliged to deliver the land which has already been mentioned, brought suit against her before your Court in ordinary judgment, in order that, in fulfillment of her contracted obligation, she might compel this party to make real and effective delivery of the lands, to which she is bound.

Foundations of Law.

First. The contracts in which occur the essential requisites
237 for their validity are valid and efficacious, and therefore they are obligatory, whatever may be the form in which they were drawn up. (Article 1278 Civil Code.)

Second. The essential requisites for the validity of the contract are: (1) Consent of the contractors. (2) Certain object which must be the matter of contract.

Third. Cause of the obligation which is established. (Article 1261 Civil Code.)

Third. The transaction is a contract by which the parties by giving, promising or retaining each one some things, avoid the provocation of a lawsuit, or put a stop to one already commenced. (Article 1809 of the Civil Code.)

Fourth. The transaction has for the parties authority of the thing judged. (Article 1816 of the Civil Code.)

Fifth. Blame can only be imputed to its originator.

Sixth. Excepting of cases expressly mentioned in the law and of those so declared by obligation, nobody shall be responsible for those events which could not have been foreseen; or if they were foreseen, they were inevitable. (Article 1105 of the Civil Code.)

Seventh. A rash litigant whose pretensions have been totally rejected must be condemned to pay costs. (General Order No. 118.)

Eighth. The power to resolve obligations is implicitly understood to be mutual, in the case in which one of the obliged parties did not fulfill what was incumbent on him. The prejudiced party may select between exacting the fulfillment, or the resolution of the obligation. Wherefore, this party considering herself prejudiced from the moment in which Manuela Gutman has not fulfilled her obligation with my client, contracted to deliver the corresponding lands of the estate "San José de las Mulas" and those of the farm called "Culo Prieto," District of Naguabo, this party brought suit in ordinary judgment against said Mrs. Gutman, widow of Bustelo, fight-
238 ing not for the resolution of the obligation, but for the fulfillment of the same with indemnity for damages. Nevertheless, the Court shall determine the resolution which it is claimed has no justifiable cause to authorize it to appoint a time. (Article 1124 of the Civil Code.)

Wherefore, denying, as we do deny, as many statements of the suit as may be contrary to those inserted in this writing, I pray the Court to accept this writing with its copies and to be good enough to acknowledge receipt of the summons served on my client about nullity or subsidiary recision of a contract or transaction referred to in the body of this writing; I also pray the Court to reject the unfounded pretension on the part of the plaintiff, by acquitting my client of the suit, and to declare valid and efficacious, in each one of its clauses, said contracts of transaction, made on the 16th of January, 1901, and signed before witnesses by Manuela Gutman, widow of Bustelo, Maria Rios, widow of Rubio, and Petronila Patricia Rios

de Noya; and condemning plaintiff to pay costs, for this is justice which I pray for at Humacao, on the 25th day of January, 1902. The counter-suit which this party formulates against the plaintiff, who had not been sued before on account of family considerations and respect, is based on the following facts:

First. By Clause 5 of the so oft repeated contract of transaction, Maria Rios, widow of Rubio, became obliged to convert it into a public instrument; and in spite of the fact that it is drawn up by the notary of this city, Antonio de Aldrey y Montolio, she has unjustly and recklessly refused to sign it. This rash obstinacy of Mrs. Rios, widow of Rubio, has been forborne and suffered by my client in order to avoid embittering family relations which I have always tried to respect; but my client has always been ready to ful-
239 fill that formality which, in due course of law, the contracting parties can compel each other, reciprocally, to fulfill; but plaintiff did not do so.

Foundations of Law.

(1) There must appear in public instruments the acts and contracts which have for their object the creation, transmission, modification or extinction of real rights upon real estate. The cession, repudiation and renunciation of hereditary rights or those of the matrimonial union come within this provision (No. 1 & 4 of Article 1280 of the Civil Code).

(2) If the law demanded the execution of a deed or other special form in order to render effective the proper obligations of my client, they may compel each other reciprocally to fulfill that form from the moment that the consent and other requisites necessary for its validity has intervened. (Article 1279 of said Text of Law.)

(3) If a person is obliged to do a thing and he does not do it, it shall be ordered to be done at his costs (Article 1098 of the Civil Code.)

The litigant whose pretensions have been totally rejected must be condemned to pay costs. (General Order No. 118.)

Wherefore, I pray the Court to be pleased to accept this counter-suit against Maria Rios, widow of Rubio, to order her to substantiate in the form provided by General Order 118, summoning her to file an answer within the term of three days, if she so desires, and to definitely dictate sentence, ordering Maria Rios, widow of Rubio, to convert the private document of transaction of hereditary rights made on the 16th of January, 1901, and signed before witnesses by Manuela Gutman, widow of Bustelo, Maria Rios, widow of Rubio, and Petronila Patricia Rios de Noya, (to convert it) into a
240 public instrument before the notary, Antonio de Aldrey y Montolió of this city; and in case said Mrs. Rios, widow of Rubio, refuses to fulfill said formality, let it be done at her cost. For this is in accordance with justice, which I ask at Humacao, with costs, date as above.

(S'g'd) JOSÉ M. CUADRA, *Attorney.*

Other Item: Having facts to bring forward, I pray the Court to appoint the day and hour for their presentation. Justice, date as above.

(S'g'd) JOSEP M. CUADRA, *Attorney.*

Writing from Attorney Lopez Landron Replying to the Suit Interposed by Maria Rios, Widow of Rubio.

To the District Court:

I, Rafael Lopez Landron, attorney for Manuela de Gutman, widow of Bustelo, in the declarative proceedings established by her daughter Maria Rios, widow of Rubio, about nullity of contract of transaction and of an expediente of dominion, or subsidiary recision, in accordance with law, I appear and state: That the Court will be pleased to declare definitely the suit brought by Mrs. Rios as reckless and foolhardy, and to condemn her at the same time to cover and observe strictly the agreements stipulated with herself freely by a private document, and to pay damages which have arisen, or which may be derived from her unjustifiable resistance to the execution of the stipulations agreed upon with the contracting parties; all this to be done after due consideration of the facts and legal foundation which I shall briefly set forth.

Facts.

(1) For more than twenty-five years of litigation, interminable and most complicated, between Mrs. de Gutman and her daughters by her first marriage, Maria Rios de Rubio and Petronila Patricia Rios, now the wife of Francisco Noya, the interested parties have been regretfully losing their time, their money and their
241 peace without profit to themselves; but on the contrary the best part of the large capital left at the death of the late gentleman, his excellency José Rios y Berrios, has been lost by the condemnation of costs and taxes and through the natural disorder which inevitably introduces itself with the discredit of the suits without end, before the disquietudes and obstacles created on the road of all good administration.

(2) It was therefore a good work; nay, more, a work which may be called a work of piety, to intervene with the legitimate intervention solicited by the parties in these affairs, thus putting an end to the painful disagreement of the family, closing the time of domestic discords, upon a basis of equity, concord and good intelligence of transaction between mother and daughters; a discreet, practical and immediate means through which each interested party might enter into possession, tranquilly and peacefully, without dispute with anybody, without fear of disquietude, without indefinite expenses, with unequivocal and sure titles of property of that part of the property separated and free, which the sound counsels of prudence many times inspired as the most acceptable settlement.

(3) The interested parties having, by a supreme effort of good will, gotten out of that inveterate chaos of suits and incidents, like

the cloth always woven and unwoven of Penelope, at last came to agree upon precise and judicious bases of [illegible]ement and separation of interests among themselves, as it is shown in the private contract of transaction, of the 16th of January, 1901, subscribed by the litigating parties in union and under the judicious counsel, I may say, of their attorneys, before attesting witnesses; which execution was not disallowed by the plaintiff, having become convinced by
242 the evidence of the stipulated contract.

(4) Amongst the clauses of this contract of transaction figure the following:

First. The obligation of Manuela de Gutman to deliver to her daughters Maria and Petronila Patricia the present estate called "San José de las Mulas."

Second. The obligation to deliver likewise the farm called "Culo Prieto"; The obligation of converting the transaction into public instrument within forty-eight hours with the conformity and intervention of said daughters.

and Sixth. The obligation of putting into the hands of their attorneys the duty of carrying out the delivery after due arrangement of the titles of property.

(5) But Mrs. de Gutman could not by herself make the delivery of the property, because this duty was entrusted to the attorneys; and as the possession had to be full and perfect, there was to be a previous settlement of the titles of property and inscription in the registry. It was owing to this that whilst the attorneys were busy in carrying out all the legal formalities of documentation, the widow of Rubio was continuing to pay rent of the estate "Las Mulas" and in the same state of things, with the acceptation of all, she held the property provisionally.

(6) As it is stated by the plaintiff in establishing the 12th paragraph of fact of her claims, she commenced to offer a partial resistance at first; and after the fulfillment of the transaction her resistance was absolute. For, although as a consequence of what had been agreed upon, the respective attorneys made the expediente of dominion, as stated in the 11th point of fact of the suit, certainly in accordance with law, it was in vain that her attorney, Mr. Cuadra, presented at the notarial office of Antonio Audrey the original private contract of transaction and tried to get it authenticated and be given the force of a public document by accompanying it
243 as a basis of the jurisdiction of the judicial dominion; and the fact of the matter is that Maria, widow of Rubio, continued her private resistance to the extent of withdrawing her power from her attorney, Mr. Cuadra, against what was stipulated in the transaction, in order to vainly oppose, as she did rashly, the approbation of the titles of property in the expediente of dominion, and the integral fulfillment of that which had been agreed upon.

(7) The delays consequent to the conduct of the widow of Rubio have prevented until now the conversion of the private contract of settlement into a public instrument, through her intervention; and consequently the delivery of the property free from litigation, with perfect titles of property registered. Moreover, when the plaintiff,

who still retains all the present estate "San José de las Mulas," was invited to prepare to deliver it undivided, in compliance with the terms of the transaction, to herself in company with her sister Petronila Patracia, she absolutely refused, as I will prove in my testimony.

(8) And this is not all; for her sister, the wife of Noya, not knowing perhaps such recklessness and temerity, has brought suit recently against my client to recover damages for the delay in the fulfillment of the settlement; which damages, under formal protest, have been declared to be of the exclusive account of Maria Rios, widow of Rubio.

(9) Evidently the inaccuracy of the facts set forth by the plaintiff has become notorious. The transaction was not limited to the inheritance of the deceased José Maria Rios de Gutman, legitimate son of the first marriage of Manuela de Gutman; the loss of the heriditary property, which had been preserved at the cost of many sacrifices on the part of Mrs. Gutman, was owing to the same litigation and obstacles brought about by the plaintiff. The exe-
244 cution of the public instrument of transaction has not depended exclusively upon my client, who has always been ready to affix her signature, but also on her daughters, none of whom has ever required her to make this execution. Each contracting party renounced all reservation of property; in the settlement there was stipulated the full dominion of the property of each one without limitation; there was provided the final settlement in full of the dif-erences which arose among the parties in any way until the moment of signing the transaction; in a word, Maria Rios, widow of Rubio, bound herself to strictly fulfill all the agreements of the private contract of transaction which she now in vain pretends to annul or rescind.

Legal Foundations.

First. The transaction defined in Article 1809 of the Civil Code has for the parties the authority of the thing judged according to precept 1816.

Second. There is a contract when there concur, as it happened in the agreement of the 16th of January, 1901, consent, certain object and cause of the obligation (Article 1261 of the Civil Code) relative to the essential requisites for the validity of all contracts.

Third. Contracts are obligatory in whatever form they may be made, when there concur the essential conditions for their validity, which are consent, object and cause (Article 1278 of the legal body).

Fourth. In consonance with the basis No. 20 of the Code and 19th of the same, the parties who agree in a transaction upon real estate, through private Document, are obliged to convert it into a public instrument, in order to have full effects and efficacy, and it cannot therefore be deemed null.

245 Fifth. Transactions can be proved by writing and attesting witnesses.

Sixth. The rescis-ory action cannot take effect without true and certain cause and cannot in any way be invoked by that party who has failed to fulfill that which has been agreed upon (Article 1124, Paragraph 1 of the Civil Code).

Seventh. The costs must be imposed on the litigant whose pretentions are absolutely rash and reckless.

Wherefore, invoking the indemnity for damages provided in Article 1101 of said Civil Code against the plaintiff; making use of the exception of want of action; and establishing as I now do a formal counter-suit against the widow of Rubio for the fulfillment of all that has been agreed upon in said contract of transaction with indemnity for damages in favor of my client; I pray the Court to admit this reply to the suit, and after admitting this counter-suit, to summons within three days the plaintiff; and when the legal procedure has been gone through, to dictate definite sentence, dismissing the suit with the costs and admitting my counter-suit; condemning therefore Maria Rios, widow of Rubio, to fulfill all the agreements of said transaction, as well as to the payment of damages for her resistance and opposition to it, with costs also for this

Item. I pray the Court to be good enough to appoint in due time the day and hour for the appearance of the lawyers and presentation of the testimony.

Item. I pray the Court to be good enough to accept as my agent in this business and incidents the neighbor Tomas Carreras.

Guayama, January 24, 1902.

(Signed) RAFAEL LOPEZ LANDRON, *Attorney*.

Through me,
TOMAS CARRERAS.

Writing from Attorney Landron in Reply to the Suit of Petronila Patricia Rios.

To the COURT: I, Rafael Lopez Landron, Attorney, in
246 the name of Manuela de Gutman, widow of Bustelo, in the declarative proceedings instituted by Petronila Patricia Rios y Gutman de Noya about the delivery of farms and indemnity of damages, in accordance with law, appear and declare: That within the legal term I come to reply to the suit, adducing the following:

Facts.

(1) By Clauses 1st and 2nd of the contract of transaction invoked by the plaintiff, the delivery of the lands of "Culo Prieto," as well as of "San José de las Mulas," has to be made not to Petronila Patricia Rios de Noya absolutely, but in halves and in common with her sister, Maria Rios, widow of Rubio.

(2) The parties being fearful of the difficulties, superable but possible, which might arise in regard to the delivery and possession of the sisters Rios, they commission expressly in virtue of Clause 6 of the same contract the lawyers in common accord, in order to carry

into effect all that which is relative to the delivery of these pieces of property and to the other particulars concerning the transaction.

(3) In regard to the provision of complete titles of dominion, recorded in favor of each one of the interested parties, according to the terms of the same transaction, there was instituted an *expendiente* of dominion, a means adopted by common accord as the most rapid, economical and efficacious to guarantee in the registry of real estate the perfect property of the possessions, because there was no person who, in the capacity of a third party, could apply to the *expendiente*, adducing real participation upon all or part of the property, which was the object of the agreement and of the justification of the dominion.

247 (4) But the fact of the matter is that without there being any reason to justify, Maria Rios, widow of Rubio, by releasing herself through her sole authority, from all the formal stipulations of the transaction, has proposed for some time to throw obstacles in their way because she could not dissolve it, which was impossible to do; and being carried away by rash and reckless ideas, she has brought suit against Petronila Patricia, her sister, and Manuela Gutman, her legitimate mother, pretending not only the nullity of the contract of transaction, and consequently of the delivery agreed upon of the property, but that she also opposes herself in the most absurd manner to the *expediente* of dominion instituted at her legitimate instance; as if the incessant change of will and compromise, with prejudice and great perturbation of the contracting parties in good faith, was a thing natural, simple and just.

(5) In these ways and with these bad manners, it is not that she resists, but that she shows an opposing attitude to the fulfillment of the transaction, to such a degree that her conduct is the exclusive cause of the delay in the satisfactory execution of all that has been agreed upon.

(6) In so much so that Maria Rios, widow of Rubio, by retaining in her power all the lands of "San José de las Mulas," except the forty cuerdas of the heirs of Bustelo, has sub-rented them to third parties, and in such conditions it becomes necessary for the law to intervene, in order to carry into fulfillment the same thing that she had agreed upon, that is the due delivery of the property and the complete settlement of the titles of property.

(7) And so it is not my client who has offered opposition or resistance to the complete observance of all the agreements
248 of the transactions in which she feels such an interest; nor can she be accused of being a voluntary cause of delay or of non-fulfillment, a determining point of the indemnity for damages which they ask for.

(8) And therefore as she is disposed and ready on her part to the delivery agreed upon with entire subjection to the clauses of the contract, she declines all the responsibility for damages on account of non-fulfillment or delay as the law determines, in virtue of the following legal foundations:

First. The contract being a law for the parties as provided in Article 1278 and other concordants of the Civil Code, my client de-

mands that there should be carried out the delivery of the property with absolute subjection to the clauses stipulated in the private agreement of the 16th of January, 1901.

Second. The Indemnity for damages cannot be imputed through guile, negligence, delinquency or contravention, which are not in the case, but alien according to the spirit and letter of Article 1101 of the Civil Code.

For such reasons I pray the Court to admit this as a reply to the suit, and that we have replied to that portion concerning the delivery of the lands of "Culo Prieto" and "San José de las Mulas," excepting the forty cuerdas belonging to the heirs of Bustelo, with entire subjection to the forms and opinions agreed upon in the contract of transaction, and to consider me as expressly opposed to the point of the suit relative to indemnity or damages, which I declare should be charged to the account of Maria Rios, widow of Rubio, and of anybody else who might be in it, with the costs to the plaintiff because she did not comply with the terms of this agreement.

Item. I pray the Court to be good enough to fix the day and hour for the appearance in regard to the proofs of the litigation.

249 I also pray the Court to be good enough to accept as my agent for this business Mr. Tomas Carreras of this vicinity.

Humacao, January 21, 1902.

(S'g'd) R. LOPEZ LANDRON, *Attorney.*

Through me,
TOMAS CARRERAS.

Humacao, January 21, 1902.

A Letter.

Mrs. Maria Rios, widow of Rubio.

MADAM: As attorney in defense of Manuel Gutman, widow of Bustelo, and expressly authorized by her, and inasmuch as you are still occupying the estate: "Mulas," excepting the forty cuerdas belonging to the minor children of Bustelo, I beg leave to ask you for the convenience of all the interested parties, to be good enough to make delivery of the one-half of the undivided farm "Mulas" to your sister, Josefa Rios de Noya, or to her legitimate spouse or representative; you having to arrive at an understanding with her, as co-owner of the half, in regard to the enjoyment of the same in fulfillment of the transaction carried out amongst the parties.

Very respectfully,

(S'g'd) RAFAEL LOPEZ LANDRON.

The foregoing is a true copy.

(S'g'd) R. LOPEZ LANDRON, *Attorney.*

Reply to the Above Letter.

HUMACAO, *January* 22, 1902.

Mr. Rafael Lopez Landron, present.

MY DEAR SIR: I beg to reply to your kind letter, dated yesterday, by informing you that, although I occupy the estate "Mulas," it is not true that I do so as owner, but simply as a lessee of said property in virtue of an agreement arrived at by my late husband, Mr. Ricardo Rubio, with Mrs. Manuela Gutman, which contract has continued and will continue in force through tacit re-renting.

250 It is true that in my capacity of heiress of Mr. José Maria Rios I have an undivided participation in all the property left at the death of said gentleman: but it is also true that as long as there is no formal liquidation of the inheritance, none of the participants can consider herself absolute owner in whole or in part of determined property which constitutes the possessions. From the foregoing it results that it is impossible for me to comply with your desires, to wit: that I should make delivery of half of the estate "Mulas" to my sister Patricia Josefa Rios de Noya, nor to her legitimate husband or legal representative, for the simple reason that I cannot give to anybody the property of a possession which I had not acquired in a proper and determined manner. My mission as lessee of the estate "Mulas" is limited to pay to the legal administratrix, Manuela Gutman, the price of the stipulated lease, as long as through the course of law or through the will of the parties, such a contract or lease lasts; and out of this it would be idle for you to invite me to exercise rights which I know perfectly well do not belong to me. On the other hand it is useless for you to invoke the fulfillment of a transaction which I have submitted to the resolution of the courts of justice, Patricia Josefa Rios being precisely one of the parties sued.

Let it therefore be known once for all that I am neither agreeable to the delivery which you indicate to me, nor much less can I consider as owner of the one-half or of any other portion of the estate "Mulas" any participant of the property left by my deceased father (*requiescat in pace*), as long as the courts do not decide otherwise, or as long as the hereditary possessions are not liquidated by my intervention, and as long as the necessary adjudications are

251 not made with the character and circumstances provided by law.

Yours very respectfully,

(S'g'd) MARIA RIOS RUBIO.

Certificate of Conciliation.

I, José Pio Manzano, Clerk of the Municipal Court of the Cathedral District, hereby certify that in the papers of the act of conciliation instituted this year, there exists one which literally copied, is as follows:

In the City of San Juan, Porto Rico, on the 31st day of October, 1901, the Court, having been open for transaction of business and the day and hour having arrived, there appeared only the lawyer Juan F. Vias Ochoteco accompanied by his good friend Ramon Gotay, and the defendant has not appeared although she had been summoned in due time and form. Wherefore, the representative of the plaintiff being allowed to make a statement, declares that she asked for an act of conciliation with Mrs. Manuela Gutman, widow of Bustelo, who is of age, property owner and belonging to this vicinity, residing at 21 Allen Street, in order that she may agree to the following:

(1) To deliver immediately to her client Maria Rios, widow of Rubio, the farm called "Culo Prieto" in the District of Naguabo, which farm belongs to her in common with her sister Petronila because it was adjudicated to them in the testamentary compact of the property left at the death of their father José Maria Rios and of their brother José Maria Rios y Gutman.

(2) To grant also in favor of his client the notarial deed referred to in the private contract made at Humacao with the inter-
252 vention of the attorneys Lopez Landron and Cuadra, in order to carry into effect the above said division of property making express mention in that deed of the fact that the property which defendant Manuela receives in virtue of the said transaction, and which transfer in her favor shall be signed by his client, was acquired through inheritance from her son of the first matrimony, José Maria Rios y Gutman, and he prays the Court that, inasmuch as the opposite party has not put in an appearance, the act be accepted as attempted or tried.

The Judge ordered in virtue of the expiration of the appointed legal time that this act of conciliation be accepted as attempted or tried, and that the copies asked for of said act of conciliation be issued, and the appearer signs after the Judge, to which I certify.

(S'g'd) DAMIAN MONSERRAT, *Att'y.*
JUAN F. VIAS.
RAMON GOTAY.
JOSÉ P. MANZANO.

And at the request of the interested party I issue the present, approved by the Municipal Judge at San Juan, Porto Rico, on the 31st of October, 1901.

(S'g'd) JOSÉ P. MANZANO.

Approved:
MONSERRAT,
Municipal Judge of the Cathedral.

There is a stamp.

Deed.

A deed of an act of renunciation of usufruct granted by Manuela de Gutman y Lara, widow of Bustelo, in favor of Maria and Petronila Patricia Rios y Gutman, at San Juan on the 26th of October, 1901.

Before Rafael Palicios Rodriguez, attorney and notary public of Porto Rico, U. S. A., residing at San Juan. Number six.

In the City of San Juan, Porto Rico, United States of America, on the 26th day of October, 1901, before me Rafael Palacio
253 Rodriguez, attorney and notary of the college of Porto Rico, being a resident and a neighbor of this city, and having an open office in the house No. 61 San Francisco Street, there appear:

Manuela de Gutman y Lara, widow of Bustelo, of age, property owner and a resident of this city, who, having in my judgment the legal capacity necessary to grant the present act of renunciation of usufruct, declares:

First. That having contracted matrimony on the 28th of January, 1866, with her first husband José Rios y Berrios, of the vicinity of Humacao, she brought to such first marriage a capital of eight thousand pesos as pharaphernalia, as it appears from the declaration made in the testament or will of her said husband Rios y Berrios, in virtue of the legal authorization granted to the executor which has never been discussed or claimed by any of the heirs or creditors, in spite of the long course transpired since the death of Rios y Berrios until the formulation of his last eulogy in 1875.

Second. That José Rios y Berrios brought to this first matrimony an hereditary capital of 147,000 pesos P. R. currency.

Third. That after the death of José Rios y Berrios there were instituted different and important claims against his capital left, suits and testamentary incidents which it is not pertinent to enumerate, on account of which from thenceforth to the present time the mass of property has been diminishing considerably and by degrees to the deplorable extent that to-day there only remain divisible among the members of the heirs of José Rios y Berrios, 989 cuerdas, approximately, of land in the District of Naguabo, and about 940 in the District of Humacao, comprising the old estate called "San José de las Mulas," with other small parcels of
254 land in the immediate neighborhood of the town.

Fourth. That the participants, who comprise the heirs of José Rios y Berrios, to wit: the widow Manuela Gutman, on her own right and as heiress of her dead son from her first matrimony, Jose Rios y Gutman, and besides her daughters by her first matrimony legitimate heirsesses also, named Maria, now widow of Rubio, and Petronila Patricia Rios y Gutman, wife of Francisco Noya y Trias, being convinced and persuaded of the urgent necessity to put an absolute and definitive stop from now henceforth to all the litigious differences which have contributed so much to diminish the valuable patrimony, and to save by all prudent means of an equitable agreement, the property which still exists, and which is derived from the capital left at the death of José Rios y Berrios, have reached some

months ago a private transaction which they considered very discreet and amicable, as sensible persons of age; and in one of the clauses of this extra-judicial compact, after having separated themselves each and every one of them, from their respective judicial proceedings, they fixed as a starting point for the better intelligence and satisfaction of the interested parties, the distribution and division amongst themselves of said property which still exists, of said testator, as it more minutely results from the extra-judicial compact made before witnesses.

Fifth. That inasmuch as some years after the death of her former husband, Mrs. Gutman contracted matrimony anew, that is, second nuptials, with Miguel Antonio Bustelo, by whom she had several children, and during which second matrimony there occurred the death of the already mentioned son by the first matrimony, José Rios y Gutman, and she came to inherit in her legitimate right, although with the obligation perhaps disputable on account of said death having occurred when said Mrs. Gutman had been
255 married the second time, and had had by said marriage some children, to reserve in favor of the daughters of the first matrimony, Maria and Petronila Patricia Rios y Gutman, the property which she had from her first son of the said matrimony, who had died prematurely, to wit: José Rios y Gutman, in which property she had to be only usufructuary for life, it is her will and desire, with the object that the separation of property and interests might be as absolute and complete as possible forever between her and her daughters by the first matrimony, after the hereditary dissolution has been dissolved in virtue of said transaction, that there should disappear all right or action of usufruct which may belong to her as such, in the property of her said daughters, after having separated for her the property which has belonged to her through the transaction, with full dominion in payment of her matrimonial paraphernalia and half of the profits.

Sixth. That, inasmuch as the actual possessions of the late José Rios y Berrios have no debts, in order to better understand the express renunciation which Mrs. Gutman hereby formulates, let it be known that the nature of the transaction, in accordance with the arrangement which they have recently made to distribute the remnant property, amongst the hereditary participants of the hereditary possessions of José Rios y Berrios, is as follows:

The Mass of Property.

Lands of Naguabo, to wit: the farm "San José de las Mulas" and other lands of the District of Humacao, approximately appraised for the special effects of the transaction, in the sum of Two Hundred Thousand Dollars	$200,000
Paraphernalia of the widow, Mrs. Gutman	5,000
Possessions from the husband, José Rios y Berrios	88,200
Half of the profits that remain for the widow	53,400
Half of the profits of the husband	53,400
256 Total equal to the mass of property	$106,800.

Account of the Widow:

Her dowry	$85,000
Her half of the profits	53,400
There belongs to her	$58,400
There are adjudicated to her for her payment, the lands of Naguabo indicated in the expediente of dominion, to wit: Nine hundred and more cuerdas with a value agreed upon of	$58,400

Account of the Heiresses:

In common, Maria and Petronila Patricia Rios y Gutman. $141,000

There belongs to them:

The third part of the net possessions of the testator for Maria y Gutman	47,200
Ditto for Petronila Patricia	47,200
Ditto of José Rios Gutman	

Account of the heirs:

In common with Maria and Petronila Patricia Rios y Gutman	$141,600
There corresponds to him third part of net principle of the testator for Maria y Gutman	47,200
Item, item for Petronila Patricia	47,200
Item, item for the two first ladies, on halfs in full dominion	47,200
Total one hundred and forty one thousand six hundred dols.	$141,600

257 And they are given in payment all the lands of the old estate "San José de las Mulas," except the 40 cuerdas belonging to the minors of Bustelo, besides the lands called "Los Beasiles," besides the farm called "Morales," also the farm called "Culo Prieto," also some of the other lands which is remaining over and above, for a value agreed upon of $141,600 pesos..... $141,600

So they are payed and there result the following:

Proofs.

What has been granted to the widow	$58,400.
What has been granted to her daughters, Maria and Petronila Patricia	141,600.
Assets of the testator	200.00

Seventh. That according to the calculations which have served as a basis and guidance for the transaction agreed upon, there may arise the question of the usufruct of the widow, Mrs. Manuela Gutman, during her life, upon the property which her two daughters of the first marriage may receive or may have received, in the way of

the inheritance left at the death of José Rios y Gutman, also of the first matrimony, calculated at $47,200 as it has been stated.

Eighth. And that for the purpose of putting a stop to this limitation or lien of usufruct in the part of the property obtained, by Maria and Petronila Patricia, in virtue of said transaction, and thus recover full dominion, the widow gives the property and the usufruct to these two heiresses, as a complete means for obtaining the dissolution of the community between the mother and her two daughters.

Grants: That from this day forward, as she has already done, in virtue of the transaction referred to, she renounces absolutely all rights of legal usufruct which may belong to her, or may
258 have belonged to her, in virtue of article 1968 of the civil code, upon property which might be considered as derived by inheritance from her son José Rios y Gutman, begotten in her first matrimony with the said José Rios y Berrios, adjudicated according to the transaction above mentioned, to her two said daughters, Maria and Petronila Patricia Rios y Gutman, sisters of both links of the same José Rios y Gutman already dead, in order that the latter may freely dispose at once, not only of the usufruct of the above mentioned property, but also of the property of the same*m* without traminels or limitations of any kind; and she binds herself never to make claims against the renunciation which she now makes; and if she made them, she does not want to be heard in judgment or out of it; for she separates herself from all said property by her free and spontaneous will.

So she grants before me, the attesting witnesses being the neighbors of the city, José Vila Esperly, and Justio Mirabel Ortiz.

I read the present act to the lady grantor and to the witnesses above mentioned, warning them that they have the right to read it for themselves; but they stated that they are perfectly informed of the contents of the same, and that she ratifies the same and signs with the witnesses; to all of which, viz:—to knowing the grantor and the rest above referred to in this public instrument, I certify and issue in four sheets of paper, and leave the word "señora" which appears amended, in accordance with the grantor and witnesses, to all of which I, the Notary, certify.

(Signed) M. G., *Widow of Bustelo*,
JOSÉ VILA,
JULIO MIRABEL.

(Signeted) and (Signed)
RAFAEL PALICIOS RODRIGUEZ.

The foregoing is a true copy in conformity with its original which exists in my original of the current protocol of public instru-
259 ments under (over) the cardinal number in the above cited case.

And in order to deliver to the grantor, I issue the present, signed and rubricated in four sheets of paper of my use, at San Juan, P. R. on the same day and month and year of its execution.

(Signeted and Signed)
RAFAEL PALICIOS RODRIGUEZ.

There is a notarial and internal revenue stamp, value fifty cents, cancelled.

There is a stamp of the registry of property of Humacao, Francisco Porrata, Registrar of Property, substitute of the city of Humacao and its district.

I do hereby certify that in Vol. 92 of the archive 19th of the Ayuntamiento of Humacao, at folio 168, there is the first inscription of the property No. 900 which description is as follows:

A Farm.

A piece of rural property called "Los Brasiles," situated in the barrio of "Anton Ruiz" district of Humacao, composed of 158 cuerdas 23/100, equivalent to 92 hectareas, 19 centiareas, 85 centiareas; being bounded on the north by the brook Mulas; on the east by land of the same estate; on the south by lands of the heirs of Francisco Pou Rios and Atanasio F. Cuadra; and on the west by lands of the heirs of Rios, from which they are separated by the road of Antonio Ruiz, which leads to Naguabo from Humacao; there is no incumbrance or lien of any kind appearing on the same.

Second.

That in Vol. 19 of Humacao, folio 173, there is the following first inscription of the property No. 191, which description is the following:

A Farm.

Called "Lebron" situated in the barrio of Anton Ruiz, of
260 this municipal district composed of 25 cuerdas with 27 mils, equivalent to 19 hectareas, 49 areas of land; in the major part plain land; being bounded on the north by lands of Francisco and Juan Buzó, which form an angle at the bullet-tree; on the east by lands of Juan Buzó and Zoilo Román, which forms an angle in itself; on the south by lands of Zoila Román and Juan Lebrón; and on the west by others of Francisco Buzó and Juan Lebron. There appear no incumberances.

Third.

In the same Vol. above mentioned 178, there is the first inscription of the property No. 902, the description of which is as follows:

A Farm.

It is without name in the district of this city, barrio of Anton Ruiz, composed of 18 cuerdas, 45 centiaras, equivalent to 7 hectareas 23 areas 19 centiareas; being bounded on the north by Eugenio Larbarten, now Sabas Roca, first and others of the estate "Mulas," called "Las Morales"; on the east by the parochial road of Anton Ruiz which leads from Humacao to Naguabo; on the south by the parochial road of Manibuchi; and on the west by the lands of Lucas Pacheco, appraised at $368. There appear no liens of any kind.

Fourth.

In the same volume already mentioned at folio 183 there is the following inscription of the property number (903, which description is as follows:

A Farm.

A piece of land without name in the barrio of Anton Ruiz, district of Humacao, comprising 43 cuerdas (100 of another) of land, high and low, equivalent to 17 hectareas, 17 areas and 19 centiareas; being bounded on the north by the parochial road of Naguabo and the farm previously described; on the east and south by land
261 of Manserrate Rosa; and on the west by lands of the heirs of Francisco Mandri, valued at $436.63. There appears no incumbrances or lien on this property.

Fifth.

In the same volume quoted at folio 188 there is the following first inscription of the property (04) the description of which is as follows:

Farm called "Estancia Peña" situated in the barrio of Anton Ruiz, district of this city, composed of 20 cuerdas, equivalent to 28 hectareas, 86 areas 8 centiareas, being bounded on the north by the parochial road which leads to the port of Humacao from said barrios of Anton Ruiz; on the east and south by the road that leads from the same road to this city, by the place called the port, and by Mauricio Peña. There appear no liens of any kind on this property.

The properties above described appear recorded, in common and by equal parts by title of transaction, in private contract, in favor of Maria Rios, widow of Rubio, and of Petronila Patricia Rios de Noya.

This is all that results from the books of this registry, and at the request of the interested party, I issue the present which I sign with my own hand at Humacao on the 7th of July, 1902.

(Signed) FRANCISCO PORRATA,
Acting Registrar of Property.

There is a stamp of the registry of property of Humacao.

Another certification of the registrar of property.

I, Francisco Porrata, substitute registrar of the city of Humacao, and of its district, do hereby certify that in Vol. 19 of the city of Humacao folio 162, there is the following first inscription of the property No. 899, which description is as follows:

Farm.

A piece of land or sugar estate called "San José de las
262 Mulas" situated in the barrio of Anton Ruiz y Mimbiche, district of Humacao, running in part to the district of Naguabo, barrio Rio Blanco, composed of 606 cuerdas, 126 thousandths, equivalent to 658 hectareas, 85 areas and 60 centiareas; being

bounded on the north by the estate "San Eladio" of José Perez Villamil, now belonging to Mr. Prudencio Barriola with that of Arturo Gallardo, called Casiano, now belonging to Prudencio Barriola, and by the Rio Blanco which separates it from the lands of the heirs of Rios; on the east by the lands of Pilar Ojea, heirs of Manuel Rodriguez, heirs of Ramon Argueso, before Pedro Lebron, heirs of Tomas Carrion, heirs of Andrea Lebron and with Rodulfo Z. Perez; on the south by the heirs of Antonasio J. Cuadra, heirs of José M. Rios; on the west by Sabas Rocafort; and on the part of the jurisdiction of Naguabo by the part of Casiano, of Arturo Gallardo, now Prudencio Barriola.

This property, according to the registry, has no liens of any kind, and is inscribed in common and in equal parts in favor of Maria Rios, widow of Rubio, and of Petronila Patricia Rios de Noya, by title of transaction of private agreement.

And at the request of the interested party I issue the present at Humacao on the 7th day of July, 1902.

(Signed) FRANCISCO PORRATA,
Acting Registrar of Property.

There is the seal of the registry of property of Humacao.

And in order to deliver to the attorney Rafael Lopez Landron through his agent Tomas Carreras, in compliance with law, I issue the present at Humacao on the 6th of November 1903.

263 (Correction and interlineations follow.)

(Sig.) ENRIQUE LLOREDA, *Clerk.*

(There is two one dollar stamps cancelled by the seal of the district court.)

The foregoing translation written on 42 typewritten sheets and initialed at the margin is a true and correct one of the English.

(Sig.) Z. VALL SPINOSA,
Official Translator.

264 We have the record itself here before Your Honor. In view of the objection of Counsel, I offer the entire record, which is now in court, and profess a willingness to submit translations of any additional parts other than those already produced.

Mr. PETTINGILL: I have no objection to that now. I think it is a proper offer.

Mr. DEXTER: For the present I want to offer the particular parts. (Reads to the Court petition filed by Attorney Cuadra; also petition filed by Attorney Juan F. Vias in the same proceeding, in behalf of Doña Maria Rios; marked Exhibits E-1 and E-2, respectively, for complainant.)

Mr. DEXTER: I offer particularly the edicts that were issued by the District Court of Humacao in that proceedings, or notices of publication, which were published in the Official Gazette, as appears from this record, on the 2nd, 3rd and 4th of July, 1901. (Marked Exhibit E-3 for Complainant.)

Also part of the same record containing the declaration of dominion by the Court in favor of Doña Manuela Gutman. (Marked Exhibit E-4 for Complainant.)

265 EXHIBIT "E" (1) FOR COMPLAINANT.

I, Enrique Rincon Plumey, Secretary of the district court of the judicial district of Humacao.

Certify: That in the action for the declaration of dominion of several properties instituted by Doña Manuela Gutman, widow of Bustelo, and others, there is a petition of institution and opposition to the proceedings which literally copied read as follows:

To the Court:

Don José María Cuadra, lawyer, on behalf and in the name of the sisters Doña Maria Rios y Gutman, widow of Rubio, and Doña Petronila Patricia Rios y Gutman, accompanied by her legitimate husband Don Francisco Noya y Frias, and Don Rafael Lopez Landron, lawyer, representing Doña Manuela Gutman, widow of Bustelo, before the court appear and in due form state:

That our clients are the only owners with full dominion in the manner, form, conditions, and of the properties hereinafter mentioned:

1st. Doña Manuela Gutman, widow of Bustelo, is the only owner without dispute of anybody of the following properties:

(*a*) A rural estate known by the name of "Islote" or "Islote Ruvalta" composed of 150 cuerdas of land of first class, equivalent to 58 hectares, 96 ares, situated in the barrio of Rio Abajo of the jurisdiction of Naguabo, bounded on the north by the river called Rio Viejo which separates it from the lands of Don Juan Burzo, at present Don Juan Garzot; on the east with the same river named Rio Viejo, which separates it from the plantation Ramirez of Doña Manuela de Gutman, widow of Bustelo, up to the place where this river and the modern Rio Blanco meet; on the south by the
266 modern Rio Blanco, which separates it from other properties of Don Pilar Ojea, at present his assigns; and on the west by lands of Don Cristino Lebrón and of the succession of Don Ramon Argueso from a bamboo tree to the bank of the Rio Blanco up to the place where a ditch and the said branch of the Rio Viejo meet; which property has a value of thirty-five hundred dollars.

(*b*) Another rural estate adjoining the former known with the name of "Plantation Ramirez" composed of 350 cuerdas, and 535/1000ths of another, equivalent to 137 hectares, with 77 ares of land of first class in its greater part, situated in the same barrio of Rio Abajo, bounded on the north by lands of Don Juan Burzó, and others called "San Francisco," formerly belonging to Don Poncio Buzó, on the east by Don José Perez Villamil, to-day Don Prudencio Bariola, with a ditch between, formerly Don Fco. Burzo, by lands of Don Juan R. Garzot, and Don Ramon P. Villamil, formerly Don Fco. Burzo, up to near the mouth of the Rio Blanco; on the south by the Rio Blanco, which separates it from Don José del Car-

men Borges and Don Prudencio Bariola and the plantation called "del lugar de los puentes," belonging to Doña Manuela de Gutman, widow of Bustelo, and on the west by the Rio Blanco which separates it from the property called "de Madam Duran," belonging to said Doña Manuela Gutman, and by lands of the Sucesión of Don Ramon Argueso, formerly of Don Pedro Lebron and besides by part of the branch of the so-called Rio Viejo, which separates it from the estate "islote" named Rivalta of Doña Manuela Gutman, which property is valued at $15,900.00.

(*c*) Another rural estate or plantation called "de Madama Duran" composed of 107 cuerdas with four hundred and sixty-eight
267 one-thousandths of another, equivalent to 42 hectares and 24 ares of land plain and hilly, situated in the same barrio of Rio Abajo of the Jurisdiction of Naguabo, bounded on the north by the Rio Blanco which separates it from the plantation Ramirez of Doña Manuela Gutman and by part of the land of the succession of Don Ramon Argueso formerly Don Pedro Lebron; on the west in part by the same Rio Blanco which separates it from said plantation Ramirez, and by part of the plantation of Don Juan Burzo; on the south by lands of Don Juan Burzó and on the east by lands of the Sucesion of Don Ramon Argueso, formerly Don Pedro Lebron; valued at $3750.00.

(*d*) Another rural estate named "los puentes" situated in the place of the same name, barrio of Rio Abajo in the jurisdiction of Naguabo, composed of thirty six cuerdas and two hundred and twenty-three thousandths of another, equivalent to 14 hectares, 23 ares of land mostly plain, crossed by a road bounded on the north by lands of Don Juan Burzo and the Rio Blanco, which separates it from the plantation Ramirez of Doña Manuela Gutman, on the east by the same Rio Blanco, boundary line of the plantation Ramirez of lady Gutman and lands of Don Francisco Burzo, on the south by lands of Don Francisco Burzo, joining with the river Anton Ruiz and on the west by lands of Juan Burzo at angle with the same river Anton Ruiz which property has a value of $1500.00.

(*e*) Another rural estate named "Cercado de Torres" and also known by the name of "Maizales" composed of 223 cuerdas and 140/1000ths of another, equivalent to 87 hectares and 712 ares of land of the first class and hilly, situated in barrio of Rio Abajo of the jurisdiction of Naguabo, bounded on the north by lands of Don Jesus L. Pereyó, formerly Don Esteban Garriga, on the east by lands of said Pereyó, formerly Garriga, on the south by the property named "Islote Quiñones," from which it is separated by the river and besides by lands of the Succession Rios y Berrios, by the
268 Rio Blanco between, and on the west by the Rio Blanco which separates partly from the lands of Don Arturo Gallardo and Don Ramon Villamil, and the remainder bounded by Don Marcelino Borges, Don Ramon Villamil, formerly Don Eladio Saldaña, valued at $8,500.00.

(*f*) Another ru-al estate known by the name of Cercado Maldonado, situated in the same barrio of Rio Abajo of the jurisdiction of Naguabo, composed of 35 and 190/1000ths cuerdas equivalent

to 3 hectares with 832 ares of land plain, bounded on the north by lands of Don Jesus L. Pereyó, formerly Don Rodulfo Maldonado; on the east by little canal which separates it from lands of Don Jesus L. Pereyó, formerly belonging to Maldonado and by the Rio Viejo which separates it from lands of the Sucession of Don Ramon Argueso formerly Don Cecilio Rodriguez; on the south by the Rio Viejo which separates it from the property called Islote Quiñones belonging to Doña Manuela Gutman, and on the west by a little canal which separates it from the lands of the plantation Torres belonging to the said Doña Manuela de Gutman, valued at $1650.00.

(*g*) Another rural estate named Islote Quiñones situated in the barrio of Rio Abajo of the jurisdiction of Naguabo composed of 88 cuerdas and 95/100ths of another, equivalent to 34 hectares and 628 ares of plain land, bounded on the north by the Rio Viejo which separates it from the plantation Maldonado and the estate Torres, belonging to Doña Manuela Gutman, on the east by lands of the Sucesion of Don Ramon Argueso, formerly of Don Cecilio Rodriguez, and at present of Doña Carmen Fuertes, on the south by the Rio Blanco of Naguabo, which separates it from the lands of the Sucesion of Don Jose Rios y Berrios, and on the west by the same river, the plantation Mulas and the estate Torres, valued at $4,400.00.

269 All the foregoing properties have been recently acquired by title of private settlement made with her daughters of her first marriage named Doña Maria Rios y Gutman, widow of Rubio and Doña Petronila Patricia Rios y Gutman, with the consented intervention of her husband Don Francisco Noya y Frias who acquired the same through testate inheritance from their legitimate father the deceased Don Jose Rios y Berrios, they are free from charges and incumbrances without written title of dominion.

2. The sisters Doña Maria and Doña Petronila Patricia Rios y Gutman are co-owners in an undivided half with the exclusion of any other persons and without contest or dispute of anybody, of the following properties.

(*a*) A rural estate or plantation formerly planted with cane called "San José de las Mulas" situated in the place of Las Mulas, barrio of Anton Ruiz, and Mambiche within the jurisdiction of Humacao and barrio of Rio Blanco jurisdiction of Naguabo, composed of 1676 cuerdas with 126/1000ths of another, equivalent to 658 hectares, 857 ares and 60 centares, of which 346 cuerdas with 542/1000ths of another are plain land of the first class, 122 cuerdas and 399/1000ths of another are plain land of the second class, 377 cuerdas and 774/1000ths of hilly land, 55 cuerdas and 792/1000ths of another pasture land, 262 cuerdas 813/1000ths of another of hilly land and 510 cuerdas 805/1000ths of another of broken land; bounded on the north by the plantation San Eladio of Don José Perez Villamil, to-day Don Prudencio Bariola, by the plantation Casiano of Don Arturo Gallardo, to-day Don Prudencio Bariola, which separates it in part the mountain chain dividing the jurisdiction of Naguabo and Humacao, and by the Rio Blanco which

270 separates it from lands of the Sucesion Rios; on the east by lands of Pilar Ojea, Succession of Don Manuel Rodiguez,

Succession of Don Manuel Argueso, formerly of Don Pedro Lebron, by Don Tomas Lebron at present his assigns, by Doña Andrea Lebron, at present her assigns, by Don Francisco Burzó and Don Luis Gautier, at present the Succession of Don Rodulfo Perez; on the south by lands of the Succession of Don Atanasio J. Cuadra and the Succession of Don José María Rios, that is to say properties named Anton Ruiz, Pasto Viejo and Mambiche, lately known by the name of Braziles, from which it is separated by the brook named Las Mulas; and on the west by lands of Don Eugenio Lavagge, at present Don Sabas Roquefort and in the part within the jurisdiction of Naguabo by the plantation Casiana of Don Arturo Gallardo, at present of Don Prudencio Bariolo, which property is valued in the sum of $44,517.00; it should be noted that in the centre of the plantation Mulas and adjoining the old establishment of this plantation there is a parcel which was taken from said plantation composed of 40 cuerdas of plain land, equivalent to 15 hectares, 72 ares and 16 centares, bounded on the north by the country road, leading from this plantation to Humacao, and which separates it from lands of said plantation belonging in an undivided half to the sisters instituting these proceedings—Doña Maria and Doña Petronila Patricia Rios y Gutman, formerly the Succession of Don José Rios y Berrios; on the south and east by lands of the same plantation Mulas and on the west by lands of the said plantation which parcel of 40 cuerdas was taken from it in favor of the minor children of Don Miguel Antonio Bustelo y Sanchez, named Doña Carolina, Don Miguel, Don Manuel, Doña Isabel and Doña Sara Bustelo y Gutman, by virtue of the judicial sale in payment of fees accord-
271 ing to public deed executed in Humacao on the 15th day of February, 1897, before the notary Don Marcelino Estevanez Nanclares and at present pending its inscription in the Registry of Property.

(*b*) Another rural estate called Los Brasiles, plane land of the first class, situated in the barrio of Anton Ruiz, within the jurisdiction of Humacao, composed of 158 cuerdas, 23/1000ths of another, equivalent to 62 centares—I mean hectares, 19 ares, 85 centares, bounded on the north by the brook Mulas which separates it from the lands of the old sugar estate San José de las Mulas above described; on the east by lands of the plantation San José de las Mulas; on the south by lands of the Succession of Don Francisco Pou y Rios and Don Atanasio J. Cuadra; and on the west by lands of the said Sucesion Rios, from which it is separated by the country road Anton Ruiz leading from Humacao to Naguabo, which land is valued at $6,320.00.

(*c*) Another rural estate named Estancia Lebron, situated in the same barrio of Anton Ruiz of the jurisdiction of Humacao composed of 25 cuerdas and 27/1000ths of another, equivalent to 9 hectares and 49 ares, of land mostly plain, bounded on the north by lands of Don Francisco and Don Juan Burzó which form an angle at an Ausubo tree on the east by lands of Don Juan Burzo and Zoila Román, formerly Andrea Lebron, which form an angle at a Jobo tree, on the south by lands of Zoila Romas and Juan Le-

bron, formerly Andrea Lebron and on the west by land that form an angle at the property of Don Francisco Burzo and Juan Lebron, formerly Andrea Lebron, valued at $777.00.

(*d*) Another rural estate without name, situated in the jurisdiction of Humacao, barrio of Anton Ruiz, composed of 18
272 cuerdas, 40/100ths of another, hilly land of the third class, equivalent to 7 hectares, 23 ares and 19 centares, bounded on the north by lands of Don Eugenio Lavagge to-day Don Sabas Roquefort, and others of the plantation Mulas, called Las Morales, on the east by the country road of Anton Ruiz leading from Humacao to Naguabo, on the south by the rural road of Mambiche, and on the west by the lands of Don Lucas Pacheco, valued at $378.00.

(*e*) Another rural estate without name situated in the barrio of Anton Ruiz, within the jurisdiction of Humacao, composed of 43 cuerdas 69/100ths of another, hilly and mountain land, equivalent to 17 hectares, 17 ares and 19 centares, bounded on the north by the rural road of Mambiche and the plantation formerly described, on the east and south by lands of Don Monserrate Rosa, and on the west by lands of the Succession of Don Francisco Mandrey, valued at $436.63.

(*f*) Another rural estate called plantation "Peña" situated in the barrio of Anton Ruiz within the jurisdiction of Humacao, composed of 20 cuerdas, equivaent to 7 hectares, 86 ares and 8 centares, bounded on the north by the country road leading from Anton Ruiz to the port of Humacao, on the east and south by the road leading from Anton Ruiz to this city, through the place called Puerto, and by lands of Don Mauricio Peña, and on the west by lands of Don José E. de la Torre, valued at $2400.00.

The foregoing properties belonging to Doña Maria and Doña Petronila Patricia Rios y Gutman, were recently acquired also through title of private settlement celebrated between them and their mother Doña Manuela Gutman, widow of Bustelo, as forming the Succession of their ancestor Don José Rios y Berrios, from whom
273 they had these properties through testate inheritance. Said properties are free from all charges and incumbrances and their present owners in undivided interest lack a written title of dominion inscribed.

The evidence which we intend to introduce to establish this acquisition, and which we hereby offer is as follows:

1. Certificate to be requested from the municipality of Naguabo and Humacao concerning the royal and municipal taxes which have been paid by the Succession of Don José Rios y Berrios within the past 25 years.

2. Testimony of the witnesses to be introduced so that they may testify as to the facts set forth in this petition, that they are true and know of their own knowledge because of having witnessed and intervened in the settlement made by the ladies instituting these proceedings.

3. Certified copy of the will of Don José Rios y Berrios and his certificate of death, the certificate of birth of Don José, Doña María

and Doña Petronila Patricia Rios y Gutman, the certificate of death of the said Don José Rios y Gutman, which documents shall be taken from the files of the voluntary testamentary proceedings of the deceased Don José Rios y Berrios.

4. Any other evidence which we may deem convenient to offer and introduce within the sixty days established for these proceedings.

By virtue of the foregoing we pray the court to please admit this petition, citing the district attorney and with his approval to take the evidence already offered and the rest that may be deemed convenient after hearing the prosecuting attorney, and making service by edicts upon the unknown persons to whom inscription that we ask may prejudice, all for the period of sixty days, in case they should have to make any objections of a better title to the ownership and once this period has expired previously hearing the
274 prosecuting attorney, to declare as established the dominion of the aforesaid properties and to order that in the manner above mentioned they should be inscribed in the registry of property in favor of our clients.

We appoint as our agent to accept service, and other process, Don Juan Landron.

Humacao, January 22, 1901.

(Signed) LCDO. JOSÉ M. CUADRA.
RAFAEL LOPEZ LANDRON.

Certified to by
ENRIQUE RINCON,
Secretary of the District Court of Humacao.

(Signed) MARIO S. GEIGEL,
Int. U. S. Court.

275 EXHIBIT "F" 2 FOR THE COMPLAINANT.

To the Court:

Juan F. Vias Ochoteco, lawyer, on behalf and in representation of Doña María Rios, widow of Rubio, before the court appears in the proceedings to establish the dominion of certain properties instituted by the lawyers Don José María Cuadra and Don Rafael Lopez Landrón, in the name of my client, of her sister Doña Petronila, and of her mother Doña Manuela Gutman, widow of Rubio, and in accordance with law, I state:

That with great surprise and in spite of the instructions to the contrary which have been given by my client to her old attorney Don José María Cuadra y Rosa, this gentleman, together with his brother lawyer, Don Rafael Lopez Landrón, have instituted the proceedings which appear setting forth the settlement as the title of acquisition of the properties adjudicated to Doña Manuela Gutman in the settlement made by this lady with her daughters of the first marriage for the partition of the properties left upon the death of Don José María Rios y Berrios, first husband of said lady.

And it appears self evident, honorable judges, that in the present case it is not really a base of the dominion title that which is invoked by the lawyers who have instituted these proceedings, because involving, as it does, hereditary rights and properties of hereditary portions to the surviving spouse, it is absolutely necessary to determine with the greatest precision possible the legal character with which said properties are acquired, so that in the future there might clearly appear described the rights which might be exercised by the legitimate descendants of the widow or widower interested in the estate, which might be parti-oned. But it was necessary to the purposes had in view by Doña Manuela Gutman to leave
276 undetermined these rights so that in this manner, as it was done by her during 25 years, in which all kinds of trickery prevented the final settlement of the testamentary proceedings of her deceased husband, so that she might continue to dispose at her caprice and without limitation whatsoever of all the valuable properties left by Mr. Rios upon his death, which at present, by reason of the maladministration of said lady Gutman, don't even reach by far the amount which was brought into the conjugal partnership by said gentleman, and which capital, because of having been inherited from his deceased father, His Excellency Don José Rios y Berrios, should be considered at present as the exclusive and individual property of the heirs, without Doña Manuela Gutman having any interest therein, with the character of conjugal property nor in any other character which might give her the right to dispose without limitation whatsoever of the properties that might be adjudicated to her. Doña Manuela Gutman can only represent in the inheritance of Don José María Rios y Berrios the limited rights and reservables that under the title of "Intestate Inheritance" she acquired from her deceased son Don José Rios y Gutman, and even if the remaining heirs of said Rios y Berrios should have the intention of claiming a strict accounting of the prodigalities of her mother and curator Doña Manuela Gutman for the properties belonging to her, it would be notoriously insufficient to respond to her daughters for the properties that she was under the obligation of keeping and preserving to be delivered to them upon their arriving at their majority or upon obtaining their legal emancipation. Notwithstanding the taking effect of these legal events and of being the daughter of Don José María Rios, fully empowered by law to enter the full possession and enjoyment of their hereditary por-
277 tions, Doña Manuela Gutman forgetting the sacred duties imposed upon her by the maternity, did not render an account of that administration and continued to put obstacles in the way of settling the estate of her deceased first husband, and in this manner to continue the enjoyment of the properties derived from said her husband, while her poor daughters only received for her support a small amount which was not in keeping with the importance of the properties which should belong to them, even after having been greatly diminished by the unexplainable acts of their legal representative.

This condition of affairs was unsufferable; my client and her sister Doña Petronila had raised a family for whose well being they

had to watch, notwithstanding the bad example set by their mother, and from this fact the idea sprung of looking for some amicable terms which should enable them to dispose some day of that which lawfully belonged to them. Steps were taken to establish the basis of a settlement and immediately an insuperable obstacle appeared, because while the sister of my client accepted in all its parts the claims of her mother Doña Manuela to the effect that the third part of the properties that might be adjudicated to her should be without any limitation and without having attached thereto the condition of reservables which the law gave them by reason of their origin, my client always insisted that such property should remain subject to the limitation derived from their condition of reservables, as it was easily proven that those properties could not pass to Doña Manuela Gutman, but in her character of intestate heir of her deceased son Don José Rios y Gutman.

But the lawyers who intervene in this so-called settlement, as they were only dealing with the determination of the prop-
278 erties corresponding to the different co-heirs of an estate which act could have been carried out without any difficulty whatever the co-heirs themselves by reason of their full legal capacity, the said lawyers seem to be interested in reaching an end to their difficult work, and lacking the means of convincing Doña Maria Rios who had given up in regard to her wishes of requiring an accounting from her former curator, and having acceded that notwithstanding the responsibilities incurred by her there might be adjudicated to her a portion equal to the inheritance, the said lawyers wanted to resolve in any way the conflict in which they found themselves, and conceived the idea with very little fortune by the way, of instituting proceedings to establish a dominion title, setting forth as title of acquisition of Doña Manuela Gutman, not a hereditary one, which really is the one that ought to have been invoked, but simply and plainly an agreement of settlement which leaves concealed in the darkness the rights which in the future might be exercised by the daughters of the first marriage of said lady against the children of her second marriage, without any benefit to any of the parties interested, and sewing the seeds of a suit for the day when the death of said Doña Manuela Gutman should come.

The most essential thing for Señor Cuadra, the former lawyer of Doña Maria Rios, was to earn fees, and in these same proceedings, and in the testamentary proceedings of Don José María Rios, his object is clearly perceived, which was nothing but to collect the sum of three thousand dollars for such an upright, laborious and commendable work.

We doubt very much whether even after the approval of these proceedings by the court its interpretation in the Registry
279 of Property could be obtained, because it being one of the objects of these important offices to get the real properties and rights in realty inscribed in the books with all the necessary circumstances to determine the character of the right which is inscribed, with the object of avoiding litigation in the future by reason of error of third parties and accidents, and it appearing from

these proceedings that it is sought thereby to obtain the inscription of properties acquired by universal title of inheritance, the Registrar of Property who is a faithful performer of his duties, will not clearly be convinced with the ingenious form employed by the lawyers instituting these proceedings to conceal the true origin of the properties given to Doña Manuela Gutman, and derived from the estate left by Don José Rios y Berrios.

My client is willing to fulfill and to compel the fulfillment in all its parts of what has been agreed among the several co-owners in the estate of her deceased father, but she is not ready to consent that there should prevail the interested purposes of the lawyers who are Don Lopez Landrón and of her sister Doña Petronila Rios.

There are involved in this matter valuable properties which affect more the future of the innocent children of my client than her own, and she is not disposed to imitate her mother Doña Manuela Gutman in the abandonment, negligence and prodigalities with which she administered always the properties of my client, and of her inheritence, Doña Petronila, who, notwithstanding her blindness in everything pertaining to this matter, is indirectly defended by Doña María in the present suit.

Doña María Rios is not willing, as it was pretended by her
280 former lawyer, to purchase at such a high price a suit for the future, and without waiving her rights to claim from him the damages resulting from the fact of he having acted contrary to the instructions given by her, and which were clear and explicit, she is compelled to oppose through me the present proceedings of dominion, which is perfectly legal and lawful, taking into consideration that the properties adjudicated to Doña Manuela Gutman had the limitation derived from their character of reservables of the same properties, I mean, that they have by virtue of the second marriage of said lady, my client may allege in these proceedings her rights of dominion upon those properties depending upon the death of the person obliged to reserve them, and above all she may and must avoid that by reason of fault of her former lawyer these proceedings should be conducted with so many and so grave legal informalities that in due time will undoubtedly prevent its inscription in the Registry of Property.

How is it possible, honorable judges, that dealing with the question of adjudication of properties derived not less than from three estates, that of Don José María Rios y Berrios, that of Doña Petronila Berrios and that of Don José Rios y Gutman, as it is partly acknowledged by the same lawyers aforesaid they should dispense with the determination of the partial character of each adjudication.

There is a dilemma the lawyers Lopez Landron and Cuadra will with difficulty reply. This dilemma is as follows: We are dealing in these proceedings, as we said beforehand, with a true interest in property and with an adjudication made in the testamentary proceedings of Don Jose María Rios y Berrios and his son Don José Rios y Gutman, in which event we must determine in accordance
281 with law the title of acquisition of the widow of the former Doña Manuela Gutman, specifying whether she holds the

same as conjugal property, individual property, legacy, marital portion or inheritance, or on the contrary, we are dealing with the real settlement which involves the alienation of real properties, and as it is not possible to deny the origin of said properties the result would be that Doña Manuela Gutman could not convey in favor of her children not even as to half of the properties acquired during the marriage for a valuable consideration by her deceased husband, and even less those that are of the exclusive dominion of the husband, unless in both cases a liquidation should be made in due form of the conjugal partnership in which there should be adjudicated to her the said properties in payment of her inheritance.

Decision of the Supreme Court of October 14, 1865; Mar. 4, 1867; December 29, 1893, and decisions of the office of the Director of Registrars of September 20, 1884; February 21, 1889; April 5, 1893 and June 7, 1894.

From all that has been said it appears that I am in a position to use, as I do hereby use, the right conceded to me by the Mortgage Law, hereby stating that the object of my opposition is simply to obtain from this court that the properties included in these proceedings should be inscribed in the Registry of Property in the manner required by said law, and surrounded with all the legal requisites tending to avoid in the future ruinous litigation and judicial battles.

By virtue of the aforesaid I pray to the court that having this motion presented and considering me as a party on behalf of her whom I represent, may at the end approve these proceedings of dominion, making the express declaration that the properties acquired by Doña Manuela Gutman have been with the char-
282 acter of an heir *ab intestato* of her son of her first husband Don José Rios y Gutman, and that those belonging to my client and to Doña Petronila come from the estate of their deceased father Don José Rios y Berrios, and in the event that the court should not see fit to make this order to deny absolutely its approval because of it not being expressed in the petition for the institution of the proceedings the true title of acquisition of the properties adjudicated to said Doña Manuela, all in accordance with justice, which I pray in Caguas on the 31st of August, 1901.

Another: I make it my own the evidence proposed by the lawyer Don Rafael Lopez Landron and José María Cuadras, to which I add the following documents:

1. Copy of the reformed inventory, liquidation, partition and adjudication of the properties of Don José María Rios y Berrios made by Doña Manuela Gutman in the testamentary proceedings of said gentlemen.

2. Deed of ratification and protocolization of the partition of the properties of Doña Petronila Berrios de Rios.

3. Portion of Don José María Rios y Berrios in the estate of his father Don José María Rios.

4. Copy of the declaration of the heirs of the minors Don José Rios y Gutman in favor of his mother Doña Manuela Gutman.

5. That by the clerk of this court should be certified from the

proceedings in the executive suit instituted in the court of Humacao by the gentlemen Soler, Pou, and Fortuño against the Succession of Don José Rios y Berrios, whether there was attached to those records deeds of sale executed by Doña Amalya, Doña Josefa and Doña Emilia Rios, in favor of their brother Don José María Rios,
283 Jr., expressing the properties included in said deeds of sale and determining whether the settlement set forth in those contracts has been annotated in the old contaduría of mortgages.

6. That a certified copy should be attached to these proceedings of the final judgment of March 18, 1877, appearing on page 152 over the first piece of the testamentary proceedings of Don José Maria Rios y Berrios.

May the court please admit the evidence offered and in due time set the hearing of these proceedings to allege what I may deem convenient.

Justice and date as aforesaid.

(Signed) JUAN F. VIAS.

And at the request of the party in interest I issue the present copy under my signature and the seal of the court of Humacao on the 31st of March, 1905.

(Signed) ENRIQUE RINCON,
Secretary District Court.

There are 2 revenue stamps of $1 each.

(Signed) M. S. GEIGEL,
Int. U. S. Court.

284 EXHIBIT "E" 3 FOR THE COMPLAINANT.

Don José Tous y Soto, Associate Judge of the District Court of Humacao, hereby makes known, that Doña Maria Rios, Gutman, widow of Rubio, Doña Petronila Patricio Rios y Gutman de Noya, and Doña Manuela Gutman, widow of Bustelo, residents and landowners of this city, have instituted proceedings before this Court to establish the dominion of the following rural estates.

First: Lady Gutman, widow of Bustelo.

A rural estate known by the name of "Islote" or "Islote Rivalta" composed of 150 cuerdas of land of the first class, equivalent to 58 hectares 96 areas, situated in the barrio "Rio Abajo" within the jurisdiction of Naguabo, bounded on the north by the branch of the so-called "Rio Viejo" which separates it from lands of Don Juan Buxo, to-day Don Juan Garzot; on the east by the same branch called Rio Viejo, which separates it from the estate Ramirez, of Doña Manuela de Gutman, widow of Bustelo, up to the confluence of this branch of the river with Rio Blanco Moderno; on the south by the Rio Blanco Moderno, which separates it from other lands of Don Pilar Ojeda, at present his assigns; and on the west by lands of Don Cristino Lebrón and of the Succession of Don Ramón

Argueso, from a bamboo tree, on the banks of the Rio Blanco up to the confluence of a ditch with the said branch of Rio Viejo.

Another rural estate, adjoining the former, named "Cercado Ramirez," composed of 350 cuerdas, with 5351/1000ths of another, equivalent to 137 hectares, 77 ares of land of the first class, in its greater part, situated in the said barrio of Rio Abajo, bounded on the North by lands of Don Juan Buxo; and others named "San Francisco," formerly belonging to Don Poncio Buxo; on the east by Don José Perez Villamil, to-day Don Prudencio Barriola,
285 a ditch between, formerly Don Francisco Buxo, by lands of Don Juan Garzot and Don Ramon P. Villamil, formerly Don Francisco Buxo, up to near the mouth of the Rio Blanco; on the South by Rio Blanco, which separates it from Don José del Carmen Burges, and Don Prudencio Barriola and the property named "Del Lugar de los Puentes," belonging to Doña Manuela de Gutman, widow of Bustelo; and on the west by the Rio Blanco, which separates it from the property called "Madame Durand," belonging to the said Doña Manuela Gutman, and by lands of the Succession of Don Manuel Argueso, formerly of Don Pedro Lebrón, also by a portion of the branch of Rio Viejo, which separates it from the estate called "Islote," known as Rivalta, of the said lady Gutman.

Another rural estate named "Madame Durand," composed of 107 cuerdas, with 468/1000ths of another, equivalent to 42 hectares and 24 areas, of plain land and hilly, situated in said barrio Rio Abajo, within the jurisdiction of Naguabo bounded on the north by the Rio Blanco, which separates it from the property called Ramirez, of Doña Manuela Gutman, and by part of the plantation of the Succession of Don Ramón Argueso, formerly Don Pedro Lebron; on the west, partly by the said Rio Blanco, which separates it from said estate Ramirez, and by part of the land of Don Juan Buxo; on the south by lands of Don Juan Buxo; and on the West by lands of the Succession of Don Ramon Argueso, formerly Don Pedro Lebron.

Another rural estate named "Los Puentes" situated in the place of the same name, barrio Rio Abajo, within the jurisdiction of Naguabo, composed of 36 cuerdas with 223 1000ths of another, equivalent to 14 hectares and 23 ares, of plain land in its greater part, crossed by a road; bounded on the north by lands of Don Juan Buxó and the Rio Blanco, which separates it from the planta-
286 tion called "Ramirez" of said Lady Gutman; on the east by the same Rio Blanco, boundary line of the formerly mentioned estate Ramirez and lands of Don Francisco Buxo; on the South by lands of Don Francisco Buxo, at an angle with the river Anton Ruiz, and on the west by lands of Don Juan Buxo, at *at* angle with the said river Anton Ruiz.

Another rural estate known by the name of Cercado de Torres, and also Maizales, composed of 223 cuerdas and 140/1000ths of another, equivalent to 87 hectares, and 712 areas of lands of the first class and hilly, situated at Barrio Rio Abajo, within the jurisdiction of Naguabo, bounded on the North by lands of Don Jesus L. Pereyó, formerly Don Esteban Garriga; on the East by lands of the said

Pereyó formerly Garriga; on the South by the estate named Islote Quiñones belonging to Doña Manuela Gutman; and on the west by a little canal, which separates it from lands of Cercado de Torres belonging to Doña Manuela de Gutman.

Another rural estate known by the name of Islote Quiñones situated at barrio Rio Abajo, within the jurisdiction of Naguabo, composed of 88 cuerdas 95/1000ths of another, equivalent to 34 hectares, and 628 ares of low land, bounded on the north by Rio Viejo, which separates it from Cercado Maldonado and Cercado Torres, belonging to said lady Gutman; on the East by lands of the Suc-ession of D. Ramon Argueso, formerly Don Cecilio Rodriguez, and to-day Don Carmen Fuertes; on the South by Rio Blanco of Naguabo, which separates it from lands of the Succession of Don José Rio y Berrios, and on the West by the same River, the plantation Mulas and the Cercado de Torres.

Second. The ladies, Doña Maria Rios, widow of Rubio and Doña Petronila Patricia Rios de Noya, have requested the dominion of the following properties, in undivided half.

A rural estate: A sugar plantation, named San Jose de las Mulas, situated at Las Mulas, barrios Anton Ruiz and Mambiche,
287 within the jurisdiction of Humacao, and Barrio Rio Blanco, within the jurisdiction of Naguabo, composed of 1,676 cuerdas, with 126/1000ths of another, equivalent to 658 hectares, 887 areas and 60 centiares, of which 346 cuerdas with 542/1000ths of another are valley land of the first class, 122 cuerdas and 399/1000ths of another of the second class, 377 cuerdas and 774/1000ths of plane lane, 57 cuerdas and 792/1000ths of another of marshy pasture land, 262 cuerdas 813/1000ths of marshy hilly land and 519 cuerdas 805/1000ths of broken land; bounded on the north by plantation San Eladio, of Don José Perex Villamil, to-day Don Prudencio Barriola, which separates it in part from the chain of mountains dividing the jurisdiction of Naguabo from that of Humacao, and by the river Blanco which separates it from lands of the Suc-es-ion of Rios; on the East by lands of Pilar Ojea, Succession of Don Manuel Rodriguez, Succession of Don Ramon Argueso, formerly Don Pedro Lebron, of Don Tomas Lebron, to-day his assigns, Doña Andrea Lebron, to-day her assigns, Don Francisco Buxó and Don Luis Gautier, to-day the Succession of Don Rodulfo Perez; on the South by lands of the Succession of Don Atanasio J. Cuadra and the Succession of Don José Maria Rios, that is to say, properties named of Anton Ruiz, Pasto Viejo, Mambiola, lately known as Braciles, from which it is separated by the brook named Las Mulas, and on the West by lands of Don Eugenio Labarte, to-day Don Sabas Rocafort, and in the portion found within the jurisdiction of Naguabo, by the plantation Casiana of Don Arturo Gallardo, to-day Don Prudencio Barriola, it being noted that in the center of the plantation and adjoining the establishments of the latter, there is a parcel of land taken from said plantation, composed of 40 cuerdas of plain land equivalent to 15 hectares, 72 areas and 16 centiareas, bounded on the North by the country road leading from this planta-

tion to Humacao, and which separates it from lands of said
288 plantation, belonging at present in undivided half to the petitioning ladies Rios, formerly the Succession of Rios y Berrios; on the South and East by lands of the said plantation Mulas, and on the west by the said plantation, which parcel of land was taken therefrom and adjudicated to the minor children of Don Miguel Antonio Bustelo y Sanchez, by virtue of a judicial sale made for the payment of fees, according to public deed executed at Humacao, on February 15th, 1897 before Notary Marcelino Estebanez Nanclares, and at present pending its inscription in the Registry of Property.

Another rural estate named Los Brasiles, valley land of the first class, situated at Barrio Anton Ruiz, within the jurisdiction of Humacao, composed of 158 cuerdas, 25/100ths of another, equivalent to 62 hectares, 19 areas and 85 centiareas, bounded on the North by the brook Las Mulas, which separates it from lands of the former plantation San Jose de Las Mulas, above described; on the East by the lands of said plantation San Jose de Las Mulas; on the South by lands of the Suc-ession of Don Francisco Pou y Rios and Don Atanasio J. Cuadra; and on the West by lands of the said Succession Rios, from which it is separated by the country road of Anton Ruiz leading from Humacao to Naguabo.

Another rural estate called: Plantation Lebron, situated in said Barrio Anton Ruiz within the jurisdiction of Humacao, composed of 25 cuerdas, with 27/1000ths of another, equivalent to 9 hectares and 49 areas of land, plain in its greatest part, bounded on the north by lands of Don Francisco and Don Juan Buxo, which form an angle at an Ausubo tree; on the East by lands of Don Juan Buxo and Zoila Román, formerly Andrea Lebron, which form an angle at a Jobo tree; on the South by lands of Zoila Román and Juan Lebron, formerly Andrea Lebron; on the west by lands forming an
289 angle at a stake of Don Francisco and Juan Lebron, formerly Andrea Lebron.

Another rural estate without name, situated within the jurisdiction of Humacao, barrio Anton Ruiz, composed of 18 cuerdas 14/100ths of another, hilly land of the third class, equivalent to 7 hectareas, 23 areas and 19 centiareas, bounded on the North by lands of Don Eugenio Labart, to-day Don Sabas Rocafort, and others of the plantation Mulas, named Los Morales; on the East by the country road of Anton Ruiz leading from Humacao to Naguabo; on the south by the country road of Mambiche, and on the West by lands of Don Lucas Pacheco.

Another rural estate, without name, situated in barrio Anton Ruiz, within the jurisdiction of Humacao, composed of 43 cuerdas, 69/100ths of another, high and mountain land, equivalent to 17 hectareas, 17 areas and 19 centiareas, bounded on the north by the country road of Mambiche, and the plantation above described; on the East and South by lands of Don Monserrate Rosa, and on the West by lands of the Succession of Don Francisco Mandri.

Another rural estate named Parra situated at barrio Anton Ruiz, within the jurisdiction of Humacao, composed of 20 cuerdas, equiv-

alent to 7 hectares, 86 ares and 8 centiareas, bounded on the north by the country road leading from Anton Ruiz to the port of Humacao; on the East and South by the road leading from Anton Ruiz to Humacao, and by the place called Puerto and by lands of Don Maurico Peña; and on the West by lands of Don José A. de la Torre.

And the Court having admitted the above named petition, hereby summons all the unknown persons to whom the dominion requested by petitioners might perjudice, as well as Doña Avelina, Doña Emirta, Doña Josefa and Doña Carmen Faura y Rios, Don José Pou y Rios, Don Narciso Soler y Rios, all in their capacity of assigns of the former owners of the properties in question,
290 Don José Maria Rios and Doña Petronila Berrios, so that within sixty natural days, from the date of the publication of this Edict in the Official Gazette of Porto Rico, may appear to allege their rights, if they deem it convenient.

Done at Humacao, June 19th, 1901.

(Signed) TOUS Y SOTO.
(Signed) JOSÉ R. APONTE, *Secretary.*

(Signed) MARIO S. GEIGEL,
Int. U. S. Court.

291 EXHIBIT "E" 4 FOR THE COMPLAINANT.

GUAYAMA, P. R., *November 16th,* 1901.

Fulladosa, Presiding Justice; Associate Justices: Kearney and Texidor.

It appearing that the lawyer, Mr. José Maria Cuadra, and in the name and on behalf of the sisters Doña Maria Rios Gutman, widow of Rubio, and Doña Petronila Patricia Rios Gutman, accompanied by her legitimate husband, Mr. Francisco Noya y Frias, and the lawyer, Mr. Rafael Lopez Landron, in the name and on behalf of Doña Manuela Gutman, widow of Bustelo, presented to this Court on the 26th of April last a petition requesting that through the legal means there should be declared in favor of the petitioners, Doña Manuela Gutman to have established the dominion that she has to a rural estate called "islote Ribalta," composed of 150 cuerdas of land of the first class, equivalent to 58 hectareas, 96 areas, situated in the barrio Rio Abajo of the jurisdiction of Naguabo, bounded on the N. by a branch of the river called Rio Viejo, which separates it from lands of Mr. Juan Buxo, at present Don Juan Garzot; on the E. by the same branch of the river called Rio Viejo, which separates it from the estate Ramirez of Doña Manuela Gutman, widow of Bustelo, up to the confluence of this branch of this river or the Rio Blanco Moderno, on the S. by river Blanco Moderno, which separates it from other lands of Mr. Pilar Ojea, at present his assigns, and on the W. by lands of Mr. Quintino Lebron and the Succession of Don Ramón Argueso, from a bamboo tree on the bank of the Rio

Blanco up to the confluence of a ditch with the said branch of the Rio Viejo, which property has a value of $7,500 (dollars).

To another rural estate adjoining the foregoing, known by the name of Cercado Ramirez, composed of 350 cuerdas with 535/1000 of another, equivalent to 137 hectares, with seven ares of
292 land of the first class in its larger part, situated in the same barrio of Rio Abajo, bounded on the N. by lands of Don Juan Buxó and others called San Francisco, formerly belonging to Mr. Francisco Buxo, on the E. by Mr. Jose Perez Villamil, at present Don Prudencio Barriola, a ditch between, formerly Don Francisco Buxó, by lands of Don Juan R. Garzot and Don Ramon L. Villamil, formerly Don Francisco Buso, up to near the mouth of the Rio Blanco, on the S. by the Rio Blanco, which separates it from Don José del Carmen Borges, Don Prudencio Barriola, and of the property called Of the Place of Los Puentes, belonging to Doña Manuela Gutman, and on the W. by the Rio Blanco, which separates it from the estate called Madame Durand belonging to said Lady Gutman, and by lands of the Succession of Don Ramon Argueso, formerly of Don Pedro Lebron and by part of the branch of the Rio Viejo, which separates it from the estate of Islote, called Rivalta, of the said Lady Gutman, which property is valued at $15,900 (dollars).

To another rural estate called Madame Durand, composed of 107 cuerdas with 468/1000 of another, equivalent to 42 hectares, 24 areas of plain land and hilly, situated in the same barrio of Rio Abajo, within the jurisdiction of Naguabo, bounded on the N. by the Rio Blanco, which separates it from the estate Ramirez, of Doña Manuela Gutman, and by part of the lands of the Succession of Don Ramon Argueso, formerly, Don Pedro Lebron, on the W., in part by the said Rio Blanco, which separates from the said estate Ramires, and by part of lands of Don Juan Buxo, on the S. by lands of Don Juan Buxó, and on the W. by lands of the Succession of Don Ramón Argueso, formerly, Don Pedro Lebron, valued at $3,750.00 (dollars).

To another rural estate, called Los Puentes, situated in the place of the same name in the barrio of Rio Abajo, within the jurisdiction of Naguabo, composed of 36 cuerdas, with 223/1000 of another, equivalent to 14 hectares and 3 areas of land, plain in its
293 largest part, bounded on the N. by lands of Don Juan Buxó and the Rio Blanco, which separates it from the estate Ramirez of Doña Manuela Gutman, on the E. by the said Rio Blanco, boundary line of the estate Ramirez, of the lady Gutman and lands of Don Francisco Buxo; on the S. by lands of Don Francisco Buxó, at an angle with Rio Anton Ruiz, and on the W. by lands of Don Juan Buxó, at an angle with the said Rio Anton Ruiz, valued at $1500.00 (dollars).

To another rural estate, known by the name of Cercado de Torres, and also by Maizales, composed of 223 cuerdas and 140/1000 of another, equivalent to 87 hectareas and 712 areas of land of the first class and hilly, situated in barrio Rio Abajo, within the jurisdiction of Naguabo, bounded on the N. by lands of Don Jesus L. Pereyó,

formerly Don Esteban Garriga; on the E. by lands of the said Pereyó, formerly Garriga; on the South by the estate called Islote Quiñones from which it is separated by the river, by lands of the Succession Rios y Berrios and by the river Blanco, between, and on the west by the River Blanco, which partly separates it from lands of Arturo Gallardo and Don Ramon Villamil and the rest if bounded by Don Marcelino Borges and Don Ramon Villamil, formerly Don Hilario Saldaña, valued at $8,500.00 (dollars).

To another rural estate, known by the name of Maldonado, situated in barrio Rio Anajo, jurisdiction of Naguabo, composed of 35 cuerdas and 195 thousands of another, equivalent to 13 hectares and 832 areas of plain land, bounded on the North by lands of D. Jesus L. Pereyó, formerly Don Rodulfo Maldonado; on the east by a little canal, which separates it from lands of the said Pereyo, formerly Maldonado and by the Rio Viejo, which separates it from lands of the Succession of Don Ramon Argueso, formerly Don Cecilio Rodriguez; on the South by the Rio Viejo, which separates it from the plantation Islote Quiñones belonging to Manuela Gutman,
294 and on the west by a little canal that separates it from the lands of the plantation Torres, belonging to the said Doña Manuela de Gutman, valued at seventeen hundred and fifty dollars.

And to another rural estate known by the name of Islote Quiñones, situated in the barrio of Rio Baja, within the jurisdiction of Naguabo, composed of eighty-eight cuerdas and ninety five thousandths of another, equivalent to thirty-four hectares, six hundred and twenty-eight ares of plain land, bounded on the north by the Rio Viejo, which separates it from the plantation Maldonado and the plantation Torres, belonging to Doña Manuela de Gutman, on the east by land of the Succession of Don Ramon Argueso, formerly of Don Cecilio Rodriguez, and at present Doña Carmen Fuertes; on the south by the Rio Blanco of Naguabo, which separates it from lands of the Succession of José Rios y Berrios, and on the west by the same river, the plantation Mulas and the plantation Torres, valued at four thousand, four hundred dollars; which properties were recently acquired by the petitioner Señora Gutman widow of Bustelo, by title of settlement celebrated with her daughters of the first marriage Doña Maria Rios widow of Rubio, and Doña Petronila Patricia Rios de Noya, who also acquired through testate inheritance from their legitimate father the deceased Don José Rios y Berrios, and which are free from all incumbrances and charges and without written title of dominion, and in favor of the other two petitioners Doña Maria and Doña Petronila Patricia Rios y Gutman to also declare established the dominion of both in undivided half in and to a rural estate or sugar estate called San José de las Mulas, situated in the place of las Mulas, barrio of Anton Ruiz and Mambiche, within the jurisdiction of Humacao, and barrio of Rio Blanco in the jurisdiction of Naguabo, composed of one-thousand, six hundred and seventy six cuerdas, and one hundred and eighty six thousandths of another, equivalent to six hundred and fifty eight
295 hectares, eight hundred and fifty seven areas, and sixty seven centiareas, of which three hundred and forty three cuerdas

and five hundred and forty two thousandths of another are valley land of the first class, one hundred and twenty two cuerdas and three hundred and ninety nine thousandths of another are valley land of the second class, three hundred and seventy seven cuerdas and seven hundred and seventy four thousandths of hilly land, fifty five cuerdas and seven hundred and ninety two thousandths of another are low pasture land, two hundred and sixty two cuerdas, eight hundred and thirteen thousandths of another are hilly land, and five hundred and ten cuerdas, eight hundred and five thousandths of another are broken land, bounded on the north by the plantation San Eladio of Don José Perez Villamil at present Don Prudencio Barriola, by the plantation Casiana of Don Arturo Gallardo, at present Don Prudencio Barriola and by the Rio Blanco, which separates it from lands of the Succession Rios, on the east by lands of Pilar Ojea, Sucesion of Manuel Rodriguez, Sucesion of Don Ramon Argueso, formerly Don Pedro Lebron, by Don Tomas Lebron, at present his assigns, by Doña Andrea Lebron, at present her assigns, by Don Francisco Busó, and Don Luis Gautier, at present the Sucesion of Don Rodulfo Perez; on the south by land of the Sucesion of Atanacio J. Cuadra, and by the Sucesion of Don José Maria Rios, that is to say properties called of Anton Ruiz, pasto Viejo and Mambiche, lately known by the Brasiles and on the west by lands of Don Eugenio Labarte at present Don Salas Rocafort, and the part within the jurisdiction of Naguabo by the plantation La Casiana of Don Arturo Gallardo, at present Don Prudencio Barriola, which estate is valued at forty four thousand, five hundred and seventeen dollars, it being noted that in the center of the plantation Mulas and adjoining the establishment of the same there is a parcel of land taken from it composed of forty cuerdas of plain land, equivalent to fifteen hectareas, seventy-
296 two areas, seventeen centiareas, bounded on the north by the country road leading from said plantation to Humacao and which separates it from lands of the said plantation, belonging at present in undivided half to the petitioning sisters Doña Maria and Doña Petronila Patricia Rios y Gutman, formerly the Sucesion of Don José Rios y Berrios, on the south and east by lands of the said plantation Mulas and on the west by lands of the said plantation, which property was separated in favor of the minor children of Don Miguel Antonio Bustelo y Sanchez, named Doña Carolina, Don Miguel, Doña Isabel and Doña Sara Bustelo y Gutman by virtue of a judicial sale according to public deed of February fifteen, 1897, executed before the notary of Humacao, Don Marcelino Estavenez Nanclares, at present pending its inscription in the registrar's office.

To another rural estate called Los Brasiles, situated in the barrio of Anton Ruiz within the jurisdiction of Humacao, composed of one hundred and fifty eight cuerdas, twenty-three hundredths of another, equivalent to sixty-two hectares, nineteen areas and eighty five centiareas, bounded on the north by the brook las Mulas, on the east by lands of the said plantation, on the south by lands of the Sucesion of Don Francisco Pou y Rios and Don Aranacio J. Cuadra, and on the west by lands of the Sucesion Rios, from which it is

separated by the country road of Anton Ruiz leading from Humacao to Naguabo, and is valued at six thousand three hundred and twenty dollars.

To another rural estate known by the name of Estancia Lebron, situated in the said barrio of Anton Ruiz within the jurisdiction of Humacao, composed of twenty five cuerdas and twenty-seven thousandths of another, equivalent to nine hectares and forty nine areas of land mostly plain, bounded on the north by lands of Don
297 Francisco and Don Juan Busó, at an angle with an ausubo tree; on the east by lands of Don Juan Busó and Zoilo Roman, formerly Andrea Lebron at an angle with a Jobo tree, on the south by lands of Zoilo Roman and Juan Lebron, formerly Andrea Lebron, and on the west by lands at an angle with a parcel of Don Francisco Busó and Juan Lebron, formerly Andre Lebron valued at seven hundred and seventy dollars.

To another rural estate without name, situated within the jurisdiction of Humacao, barrio of Anton Ruiz, composed of eighteen cuerdas and fourteen hundredths of another, hilly lands of the third class, equivalent to seven hectareas, twenty-three areas, and nineteen centiareas, bounded on the north by land of Don Eugenio Labart, at present of Don Sabas Rocafort and others of the plantation Mulas, called Las Morales, on the east by the country road of Anton Ruiz leading from Humacao to Naguabo, on the south by the country road of Mambiche, and on the west by the lands of Don Lucas Pachecho, valued at three housand, one hundred and sixty-eight dollars.

To another rural estate without name, situated in the barrio of Anton Ruiz within the jurisdiction of Humacao, composed of forty three cuerdas, seventy nine hundredths of another, high and mountain land, equivalent to seventeen hectareas, seventeen areas and nineteen centiareas, bounded on the north by the country road of Mambiche and the plantation above described, on the east and south by lands of Don Monserrate Rosa, and on the west by others of the Sucesion of Don Francisco Mandry, valued at four hundred and thirty six dollars, sixty three cents.

And to another rural estate called plantation Peña, situated in the barrio of Anton Ruiz, within the jurisdiction of Humacao, composed of twenty cuerdas, equivalent to twenty hectareas,
298 eighty-six areas, eight centiareas, bounded on the north by the country road leading from said barrio to the port of Humacao, on the east and south by the road leading from the same barrio to the city of Humacao, by the place known as el Puerto and by lands of Don Mauricio Peña, and on the west by lands of Don José A. de la Torre, valued at two thousand four hundred dollars; which properties were acquired by the petitioning ladies Rios Gutman by virtue of a settlement celebrated by them with their mother Doña Manuela Gutman, widow of Bustelo, forming the Sucesion of their ascendant Don José Rios y Berrios, from whom they acquired these properties through testate inheritance and which are also free from incumbrances and without written title of dominion, and that once it is declared as established the dominion after hearing the evi-

dence offered, to order the inscription of all the properties above mentioned in the registery of property in favor of the petitioning ladies.

It appearing that having appeared the lawyers Cuadra and Lopez Landron on behalf of the petitioners, it was ordered by order of the twenty-sixth of April, in order to enable the court to pass upon the prayer of the petition that it should be shown from whom the properties were acquired by Don José Rios y Berrios, and said order having been notified to the lawyer Cuadra in furtherance of said order by a statement filed on the seventeenth of June, he made the required showing, further praying therein that there should be summoned the persons absent to whom the approval of these proceedings might be prejudicial, by means of the official paper of this island, and having admitted the evidence offered, there was ordered the citation of the prosecuting attorney, of Doña Petronila Rios, widow of Torre, in her capacity of heir of Don José Maria Rios, Doña Petronila Berrios and Doña Emilia Rios, that of Doña Amalia Rios de Pou or her legitimate representative Don José Toro
299 Rios; that of Don Alfonso and Don Emilio Faura as heirs of Doña Avelina Rios y Pou, and that of Doña Josefa Soler y Rios de Rocafort as heir of Doña Josefa Rios, and by edicts and for the period of sixty days those absent and of unknown residence, Doña Avelina, Doña Emerita, Doña Josefa and Doña Carmen Faura, Don José Pou y Rios and Don Narcisco Soler y Rios, it being announced by means of said edicts which should be fixed at public places and should be published three times in the official Gazette of the island, the prayer of the petitioners and also citing in the same manner and for the same period those unknown persons to whom might prejudice the inscription of the dominion requested in order to appear and allege their rights, admitting the evidence offered and ordering that the same should be taken.

It appearing that it having been announced by edicts the requests of the petitioners, the lawyer Cuadra by petition filed on the seventeenth of July attached thereto to be made a part of the record three copies of the official Gazette in which it appears published for the citation of the absentees and unknown persons.

It appearing that said lawyer Cuadra on the eighteenth of July filed also the private agreement of settlement as title of acquisition of the properties mentioned in these proceedings, celebrated between Doña Manuela Gutman and her daughters Doña Maria widow of Rubio and Doña Petronila Patricia Rios de Noya, accompanied by her legitimate husband Don Francisco Noya Frias.

It appearing that the witnesses Don Manuel Argueso Flores and Don Jesus Almiroty Porratia, testified after having heard read the petition of the petitioners, that they knew that Doña Manuela Gutman, widow of Bustelo, Doña Maria Rios Gutman widow of Rūbio and Doña Petronila Patricia Rios Gutman de Noya, are the
300 owners and have possessed and do possess in that capacity the rural estates which declaration of dominion they decided to establish, who acquired the same by title of settlement celebrated by said ladies on the sixteenth of January of the present year, in

which settlement they intervene as witnesses, therefore it being true, the facts stated in the petition.

It appearing that *that* the lawyer Cuadra in the name and representing only Doña Petronila Patricia Rios de Noya, by motion filed on the 12th of August, requested that the adjoining owners not having been summoned those represented by their attorney in fact, Don José Toro Rios, nor Doña Josefa Soler Rios, nor Doña Petronila Rios, widow of Toro, there should be issued through him an order to the municipal court of Humacao for his citation, which the court granted.

It appearing that on the thirty-first of August the lawyer Don Juan F. Vias Ochoteco in the name and on behalf of Doña Maria Rios Gutman, widow of Rubio filed his objections in opposition to the proceedings of dominion instituted by his client in conjunction with the ladies Gutman widow of Bustelo and Rios Gutman de Noya, and prayed principally to that to which he made opposition was the express declaration that the properties acquired by Doña Manuela Gutman were in her capacity as heir ab intestate of her son Don José Rios Gutman, and those belonging to his client and to her sister the lady Rios de Noya, come from the inheritance of her deceased father Don José Rios y Berrios, and in case the court should deem proper this decision, to absolutely deny the approval of the proceedings instituted, because of not having been stated in the petition the true title of acquisition of the properties adjudicated to the petitioner lady Gutman, widow of Bustelo, and in addition he made as his own the evidence offered by Lawyers Lopez Landron and Cuadra, adding
the same with the documentary evidence that he attached and
301 that is a part of the record, which evidence was admitted and
the certificates requested by said lawyer Vias was ordered to be issued.

It appearing that at the request of the lawyer Cuadra there was issued an order to the municipal court at Humacao for the citation of the adjoining owners represented by their attorney in fact Don José Toro Rios and Doña Petronila Rios, widow of Toro and of Doña Josefa Soler Rios de Rocafort, which order duly returned was returned by the lawyer Lopez Landron, who prayed that as the period of two months for the opposition had expired without having made the same that this proceedings should be referred to the prosecuting attorney.

It appearing that having referred same to the prosecuting attorney he was of the opinion that this proceedings should be approved and that there should be ordered the inscription in the registry of property of the properties which declaration of dominion was prayed, without reservation of any kind.

It appearing that in these proceedings the prescriptions of law have been observed, and the same having been assigned to the associate judge Don Juan Miguel Kearney y Alvarez.

Considering that the settlement agreed and adjusted among capable persons upon a lawful subject matter is not only a valid and effectual contract but it has for the parties thereto the authority of

res judicata, as it is established by articles 1809 and 1816 of the civil code.

Considering that the opposition to the proceedings of dominion authorized by article 395 of the mortgage law by third parties cited for the proceedings and taking of evidence and never this opposition can be made by any of the petitioning parties.

It appearing that Doña Maria Rios widow of Rubio is one of the petitioning parties to the proceedings, has assigned a settle-
302 ment which determines the beginning of said proceedings, has agreed as to the adjudication to each interested party according to the terms of the settlement, clauses three and four, has made for her own the evidence corroborating the fact of the settlement, against which acts of her own she cannot validly exercise the action belonging to persons foreign to the institution of the dominion.

It appearing that it corresponds to the court to weigh the evidence taken and the allegations made, allowing or di-allowing the claims and declaring the dominion as established.

Considering that the court appreciating in all its value and effect the evidence taken it is proper to decree the approval of the proceedings.

Having considered the articles quoted and others applicable thereto, the judges Don Salvador Fulladosa and Don Juan Miguel Kearney before me, the undersigned secretary stated, that they declare as established the dominion of the properties in the manner requested and proposed by the petitioners Doña Maria Rios widow of Rubio, Doña Petronila Patricia Rios Gutman de Noya, accompanied the latter by her husband Don Francisco Noya Frias, and Doña Manuela Gutman widow of Bustelo in the manner appearing in the statement of facts, ordering in consequence thereof that in such terms there should be inscribed for the respective petitioners in the registry of property the full dominion of the properties described without limitation nor reservation of usufruct.

And the substitute Judge Texidor said: That he was of the opinion that in this kind of proceedings there should only be declared established or not the dominion, these proceedings should be approved declaring as established the dominion of the properties in favor of the petitioners without making any other declaration.

303 This it was stated and signed by the judges mentioned in the margin to which I certify.

(Signed) SALVADOR FULLADOSA.
J. M. KEARNEY.
JACINTO TEXIDOR.
JOSÉ R. APONTE, *Secretary.*

(Signed) MARIO S. GEIGEL,
Int. U. S. Court.

304 Witness: ANGEL PLA.

Direct examination.

(By Mr. DEXTER:)

Q. What is your name please?

Ans. Angel Pla.

Q. What is your occupation?

Ans. Clerk of the Treasury Department.

Q. Have you come here in response to a subpœna which was served upon the Treasurer for the purpose of presenting certain records of the Treasury Department of Porto Rico?

Ans. I have been sent by the Treasurer to bring some books.

Q. Have you got with you the records of the Treasurer's Office showing the "Planillas" or statement of properties owned by Victor Burset in 1901 and 1902?

Ans. Yes, sir.

Q. Just refer to those books and find the statement made by Victor Burset of property owned by him in 1901 and 1902.

Ans. (Witness refers to book) This is the only statement of property which I have been able to find for the years 1901 and 1902, under the name of Victor Burset.

Q. Is that signed by Victor Burset?

Ans. I don't know whether that is his signature, but that signature says Victor Burset. I don't know whether that is it.

Q. Is that signature under the usual affidavit which accompanies those statements?

Ans. That is the proper place for the taxpayer to sign.

Q. For what time was this statement made? Showing ownership of property for what date?

Ans. This shows that on May 8, 1901, he was the owner of that property.

Q. Do you know Victor Burset?

Ans. No, sir; I have never seen him.

Q. Where was this statement or "planilla" made?

Ans. At the City of Humacao.

305 *Translation of "Planilla" Made by Interpreter.*

Personal Property	$28
10 Cows	150
Total	$178.

No Debts.

Assessed Value	$178
Annual Tax	00.90
First Instalment	.45
Second Instalment	.45
Total	$178.00

O. K. Number of Revision 23.

Oath.

I, Victor Burset, solemnly swear and state, to the best of my knowledge and belief, that the foregoing declaration contains a true and complete account of all the property that I have or which belongs to me of my own right or as partner or which I have in my possession as an attorney, manager, tutor, agent or as the party in charge of the property of a party disqualified or incapacitated by law, and that the said property has been totally and accurately described, their true value and condition having been stated; that I have not endeavored to deceive the assessor as to the quantity or quality of the said properties and that the deductions by myself, but as requested, are *bona fide* for value received and legal and that they do not consist in any manner whatsoever of alleged debts or partnership of any institution, society, corporation or company; that I have not exchanged temporarily or converted, either directly
306 or indirectly, any portion of my property for another exempt from taxation, or for any bonded indebtedness of any kind, for the purpose of evading the valuation of the same so as not to pay taxes.

(S'g'd) VICTOR BURSET.

Subscribed and sworn to before me this 8th day of May, 1901.

(S'g'd) JUAN N. HERRERA.

Mr. DEXTER: This "planilla" is offered in evidence.

(Same is noted as complainant's Exhibit F.)

Q. Have you any other record with you containing any "planilla" or statement purporting to be signed by Victor Burset of Humacao?

Ans. I cannot say that. For some other year?

Q. Yes.

Ans. Yes, sir.

Q. Well refer to that. For what year is that?

Ans. I found this one. Let us see. 1902 and 3 and 1903 and 4; for two fiscal years.

Q. Does that purport to be signed by Victor Burset of Humacao?

Ans. It is to be supposed so. These lead pencil notes were put there by me yesterday.

Translation of "Planilla" Made by Interpreter.

Statement of Assessment 1902-3.
Personal Property.
Taxpayer, Victor Burset.
Municipality, Humacao.
Supplementary Roll 456.
Number of Page 1355.
Address, San Juan, P. R.; Ward, Rio Abajo, P. R.
Real Estate.
Description of Property: 12 cuerdas of land; extension 12; good for pasture land; Class $60; Value $720.
Claim No. 6927.

307 *Oath.*

I, —— —— Solemnly swear and state that, to the best of my knowledge and belief, the foregoing statement is a complete and true account of all the property that I have or that belongs to me in my own right or as partner or that I have in my possession as attorney, manager, guardian, agent or trustee of the property of a party incapacitated by law; that the said property has been fully and truly described; its value and conditions having been stated; that I have not endeavored to deceive the assessor as regards the amount or quality of said property; that the deductions for credits and rents are *bona fide* for value received, are legal and they do not consist, in any manner whatsoever, of alleged or supposed debts or partnership of any institution, society, corporation or company; that I have not converted or exchanged temporarily, either directly or indirectly, any portion of my property for another exempt from taxation, or for any bonded indebtedness of any kind, for the purpose of evading the assessment of the same for the purposes of taxation.

(S'g'd) VICTOR BURSET.

May 25, 1903.

Subscribed and sworn to before me this 25th day of May, 1903.

(S'g'd) A. C. HANSARD.

Recapitulation.

Total Real Property	$720
Liens deducted	None.
Total Taxable Property	$720
Tax for 1902-3	$7.20
Each Instalment	$1.80

(This "planilla" is noted as complainant's Exhibit F-A.)

308 Q. Have you a statement of the property owned by Victor Burset of Humacao for the following year?

Ans. This statement of assessment was made out in 1902-3 to have effect for 1903-4 also.

Q. Do you know this man Juan N. Herrera, whose signature appears upon this "planilla?"

Ans. No, sir; I have never seen him, not do I know who he is. There is another assessment.

Q. For what year?

Ans. 1902 and 3. This is a copy of the first "planilla" we saw.

Q. That was not signed by Victor Burset?

Ans. It was copied for the following year.

No cross-examination.

Witness retires.

Mr. DEXTER: Complainant offers in evidence that part of the record for the declaration of dominion title, contained on pages 21 and 22, being the motion of the Attorney José Maria Cuadra for

the collection of fees in that proceeding against Doña Maria Rios, and her Answer thereto (part of the same record).

Mr. PETTINGILL: No objection on the part of the defendants.

(The paper is admitted in evidence and marked Exhibit E-5 for Complainant.)

Mr. DEXTER: Complainant offers in evidence the following receipts for rent paid by complainant to Doña Manuela Gutman for the property called "San José de las Mulas," for the purpose of establishing her occupation or possession under the said lease from Manuela Gutman:

Receipt dated November 14, 1897.

Receipt dated February 1, 1901.

309 EXHIBIT "E" 5 FOR THE COMPLAINANT.

Translation from Pages 21 and 22 of the Dominion Title Proceedings.

To the Court:

José M. Cuadra Rosa, Lawyer, in the proceedings for the declaration of dominion of several rural estates in favor of Doña Maria, Doña Petronila Patricio Rios Gutman and Doña Manuela Gutman, widow of Bustelo, before the Court appear- and, in accordance with law, alleges:

That in spite of the repeated demands, I have been unable to get my former client, Doña Maria Rios, widow of Rubio, to pay to your petitioner the sum of $700.00 (pesos) which she owes him, as fees earned in said proceedings of dominion, above mentioned. This compels me to use the right given to me by Article 12 of the Law of Civil Procedure, to which end I hereby present a detailed statement of the sum of fees, which proves them; and swearing that the same are due to me and that the items appearing thereon are unpaid.

I pray the court that, upon admitting the presentation of the itemized statements of fees earned and unpaid as well as considering the oath hereinbefore mentioned as taken, Doña Maria Rios, widow of Rubio, be ordered to pay within six days the sum of seven hundred pesos ($700.00), appearing as balance in my favor with costs of these proceedings, and that an attachment will issue upon her failure to do so.

Justice which I pray at Humacao this 4th day of August, 1901.

Furthermore: I reserve the right to claim through the legal means the remainder of my fees, for consultations, conferences and interviews had to continue and settle the matter entrusted to me by Doña Maria Rios, widow of Rubio, and to that end I pray the court to consider as made this statement for the proper legal effects.

Justice that I pray as aforesaid. Date up *supra*.

310 Furthermore: It is necessary, that, if the Court should deem it expedient for the purpose of the order requested against the debtor, the proper communication should be directed to the Municipal Judge of the City of Humacao.

I pray the Court to consider as made this statement for the corresponding effects.

(Signed) JOSÉ M. CUADRA.

(Signed) M. S. GEIGEL,
Int. U. S. Court.

Translation from Page Twenty-four of the Dominion Title Proceedings.

Notification and Demand.

On the 7th day of the current month of August, I went to the domicile of Doña Maria Rios, widow of Rubio, and notified her — the foregoing order, by reading same to her and giving her a literal copy thereof, and demanding her upon delivery made to her of the attached statement, to pay within six days to the lawyer Mr. Cuadra the seven hundred pesos claimed by him, advising her that an attachment will issue upon her failure to do so. Whereupon she stated: that she cannot pay that sum, because she considers it exhorbitant and because the lawyer has acted contrary to her instructions, as she has already had an opportunity to tell him so some time prior to the presentation of the aforesaid petition, and that of all the witnesses which he claims signed the settlement, only Don Manuel Argueso signed in her presence, and that notwithstanding, she will pay in due time whatever may be reasonable.

She signs and I certify.

(Signed) MARIA RIOS RUBIO.
(Signed) GONZALEZ.

(Signed) M. S. GEIGEL,
Int. U. S. Court.

311 Receipt dated February 28, 1901.
Receipt dated March 28, 1901.
Receipt dated May 19, 1901.
Receipt dated November 15, 1901.
Receipt dated January 31, 1902.

Mr. PETTINGILL: We object to their admission as immaterial because of the allegation that these receipts are all previous to January, 1902, while the allegation of the defendants touching the possession of the complainant is limited to the time since the month of June, 1902.

Mr. DEXTER: By provisions of the private contract it was attempted to sign to Doña Maria these two properties, and it is claimed that because she remained in possession of this one, that was a ratification of that private contract. These receipts are offered to show that a lease was in force before the private contract and that money was collected by her mother on this lease. When her mother died she remained in possession for several months after the exe-

cution of the private contract and we have receipts for money paid for the lease of the property from her mother.

The COURT: The objection is overruled and the receipts are admitted for the purpose noted in the offer, to which defendants except.

Mr. DEXTER: The purpose of these receipts is to show that she did not remain there under the private contract, but under the lease. We are going to show that a deed was made to the other side, of 100 acres of very valuable land. There was no change of the possession. The mother had been in possession and remained in possession, and my client remained in possession because she had been in possession under this lease. Doña Petronila only took possession of a piece of 100 acres which we set up as being set aside for her as an award for participation in this private contract.

Mr. PETTINGILL: Our contention is that the records will show, have shown so far as they have been introduced, that after the making of this private contract, they proceeded to carry out the terms of it by bringing this proceeding to have a title established in accordance with it; that this complainant opposed those proceedings; that after the Court of Humacao decided against her, she appealed to the Supreme Court, and our allegation is that as soon as the Supreme Court had passed upon her appeal and confirmed the
312 lower decision, that this complainant recognized that decision by going into possession of this hacienda "Las Mulas," which was in June, 1902. What she did before that while she was opposing has nothing to do with it. I say those receipts have nothing to do with it because the controversy was going on up to June, 1902. The title had not been declared.

The COURT: Is there a Receiver in possession of it?

Mr. DEXTER: Yes, sir; of this other piece of property.

(The receipts are admitted in evidence and marked Exhibit G for the Complainant.)

Witness: NICOLAS OYANGURAN.

Direct examination.

(By Mr. DEXTER:)

Q. Please state your name, residence and occupation.

Ans. Nicolas Oyanguran; 45 years of age; San Juan, Porto Rico; coffee grower.

Q. You haven't any commercial house?

Ans. Not now.

Q. You are an owner of coffee properties?

Ans. That is it.

Q. How long have you lived in Porto Rico?

Ans. About 29 years.

Q. Are you acquainted with Messrs. Garzot & Fuertes of Naguabo?

Ans. I am.

Q. How long have you known them?

Ans. About 12, 12 or 14 years, personally, not as Garzot & Fuertes, personally.

Q. Are you acquainyed with the district of Humacao and Naguabo?

Ans. In a general way, I have been there several times.

Q. Are you acquainted at the present time or have you been recently as a result of any examination of lands in that section for the establishment of a sugar central?

Ans. I am interested in one of the centrals about to be erected.

Q. Do you know any of the lands or properties which formerly belonged to the succession or estate of José Maria Rios in that district?

Ans. Yes, I know of some lands that came from that estate.

Q. Do you know any lands which were purchased by Garzot & Fuertes, which formerly belonged to that estate?

Ans. I do, more or less, in a general way.

313 EXHIBIT "G" FOR COMPLAINANT.

(*Receipts and Letters.*)

SAN JUAN, *November* 15, 1901.

Doña Maria, widow of Rubio, Humacao.

DEAR SISTER: My mother requests me to write to you to remind you of the maturity of certain monthly rentals and she would be much obliged if you could send her that amount in a Money Order at the earliest possible date, as she needs it very badly. Regards to all the family who I hope are well, and with love from your brother.

M. BUSTELO.

SAN JUAN, P. R., *January* 10, 1902.

Doña Maria R., widow of Rubio, Humacao.

DISTINGUISHED FRIEND: At the request of Doña Manuela I beg to inform you that there has been delivered to her friend Don Francisco Burzó the receipt of fifty-four dollars which, in accordance with the letter you addressed to Manolo you were disposed to pay. You may, therefore, deliver this amount to said friend for which your mother will be obliged. My wishes and those of Carola are that the present year may be a prosperous and happy one for you, and with many kisses for your children, especially for Ricardito whom I never forget, I am always yours,

VICTOR BURSET.

314 Received of Doña María Rios, widow of Rubio, the sum of $60., amount of the rent corresponding to the month of May, to December, 1901 and January 1902, balance to which Doña Manuela Gutman, widow of Bustelo, is entitled to receive as the difference between the rent that must be paid by Doña Maria for the plantation "Mulas" and the support that said Doña Maria has been receiving.

Humacao, January 31st, 1902.

By order of Doña Manuela Gutman.

FRANCISCO BURSET.

I have received of Doña Maria Rios, widow of Rubio, the sum of one hundred and twenty dollars as rent for the plantation Mulas and corresponding to April 1st to the last day of said month.
Humacao, May 19, 1901.
(Signed)
M. G.,
Widow of Bustelo.

Received of Doña Maria Rios, widow of Rubio, the sum of one hundred and twenty dollars, amount of the rent of the plantation "Mulas," corresponding to the first of March to the last of said month. Amended.
Humacao, March 28, 1901.
(Signed)
M. G.,
Widow of Bustelo.

Received one hundred and twenty dollars for Doña Manuela G., Manuela.

Received of Doña Maria Rios, widow of Rubio, the sum of one hundred and twenty dollars, amount of the rent of the plantation "Mulas" corresponding to the 1st of February, to the last day of said month.
Humacao, February 28, 1901.
(Signed)
M. G.,
Widow of Bustelo.

Received of Doña Maria Rios, widow of Rubio, the sum of $120 for the rent of the plantation "Mulas" corresponding to the first of January to the last day of said month of the year 1901.
Humacao, February 1, 1901.
(Signed)
M. G.,
Widow of Bustelo.

315 Received of Don Ricardo Rubio the sum of two thousand six hundred pesos current coin, amount of the rent of the plantation Mulas corresponding to the 13 months comprised from the first of November, 1897, to the 30th of November, 1898.
Humacao, November 14, 1897.

M. G.,
Widow of Bustelo.

(Signed) MARIO S. GEIGEL,
Interpreter U. S. Court.

316 Q. Were you approached by Messrs. Garzot & Fuertes or either of them, about the time they purchased those lands or shortly before, with reference to the purchase of them?
Ans. Yes, I was quite intimate with Mr. Fuertes in a social way and by my being connected with the sugar industry, I have had some intimations from Mr. Fuertes with regard to those lands.
Q. Did either of them discuss to you the contemplated purchase of those lands?

Ans. Yes, I think he did.

Q. Which one was it?

Ans. Mr. Garzot.

Q. At that time he had not taken the deed or title?

Ans. No, I think he approached me at the time as to the advisability or possibility of its being for sale.

Q. Do you recall about when that was?

Ans. No, I cannot tell.

Q. Approximately.

Ans. About two or three or four years ago.

Q. Did he say anything to you about his intention to buy those lands?

Ans. Yes, he asked me whether I would buy them alone or would buy with him.

Q. Was anything said by him or by you to him about the title to the lands?

Ans. I objected. I had an understanding or there was a current rumor that there was some trouble with the succession. I objected to having anything to do with the lands.

Q. What did you tell him at the time?

Ans. That I would have nothing to do with them.

Q. What did he say then?

Ans. I think he told me that he had consulted his lawyers and that it was all right.

Q. What was it that you objected to specifically; what feature of the title was it that you objected to?

Ans. I did not object specifically because I only knew it from current rumor.

Q. At that time had he made the purchase?

Ans. I do not know; I don't suppose so because he only told me that they were for sale.

Q. Do you know approximately, as a practical man, the value of those lands?

Ans. No, as I say, I only know things in a general way and if I had an idea I would have had to consult somebody about it before deciding on the value.

317 Q. You yourself as a practical man having bought and sold lands——

Ans. I beg your pardon, I have not bought or sold sugar lands.

Q. Don't you know the Villamil lands in that section?

Ans. I know that Villamil owns lands there and he must have bought them, but I do not know what he paid for them.

Q. How long ago was that?

Ans. I do not know.

Q. Couldn't you give an idea as a practical man of the value of those lands? When I was speaking to you yesterday, didn't you express an idea of the value of the lands to me?

Ans. Well, from current rumor. As I have stated before, I am not a sugar land owner and I have no experience of the value of those lands, and even if I had an idea of buying lands, I would not depend upon that idea. I would consult with somebody else.

Q. You are a very good friend of Mr. Garzot, are you not?
Ans. In a social way.
Q. Mr. Garzot been talking to you this morning about this matter?
Ans. No, sir.
Q. He hasn't talked to you?
Ans. No, sir.

Mr. DEXTER: That is all.

Cross-examination.

(By Mr. PETTINGILL:)

Q. As to the time of your conversation with Mr. Garzot, you say it is from two to four years ago?
Ans. Yes, sir.
318 Q. Can't you fix it nearer than that, by your movements, by your going away from the Island? Which Garzot was it, the old man or the young man?
Ans. The old man.
Q. Do you know where the old man is now?
Ans. I understand he is in Barcelona, Spain.
Q. It was before he went to Spain? Did you know when he went?
Ans. Yes, sir; I saw him often.
Q. About how long before that was it?
Ans. About two years before he went.
Q. Two years before he went?
Ans. I suppose, because my memory is not very correct.
Q. What is your idea about when he went?
Ans. I think about a year and a half ago he went. Really I do not know.
Q. If, as a matter of fact, it has been nearly three years since he went, could it have been two years before he went that you talked with him.
Ans. Yes, if it was three years ago that he went.
Q. Did you give him anything that could be called information about any trouble with that title; did you tell him anything definite?
Ans. No, because I didn't know anything about it. I knew there was some suit between the mother and the daughter, but I did not specify what particular case it was.
Q. Can you recall the language you used when you suggested that there might be some trouble with the title?
Ans. When I was buying some coffee plantation, when I knew there was a bad title, I would have nothing to do with it.
Q. That is what you told him?
Ans. Yes, sir; and I remember that he said that was out of the question; that he had questioned his lawyer as to the titles and that those lands were in condition to be bought.

Witness retires.

319 Witness: SANTIAGO R. PALMER.

Direct Examination.

Interpreted.

(By Mr. DEXTER:)

Q. Please state your name in full, your residence and occupation.
Ans. Santiago Rosendo Palmer; Notary Public; San Juan.
Q. Did you know Doña Manuela Gutman in her lifetime?
Ans. Yes, sir.
Q. At her death how many children did she leave?
Ans. Five that I knew and I knew that she had two more by her first marriage.
Q. Do you recollect when she died?
Ans. I have an idea that it was in the month of June or July, 1902.
Q. Did you know her quite intimately? Were you quite well acquainted with her?
Ans. Not much; we were neighbors; we were not very intimate.
Q. Did you have any business relations with her; act for her in any capacity prior to her death, as counsellor or adviser?
Ans. No, sir; none whatever.
Q. Who was her counsellor or adviser if you know?
Ans. I do not know.
Q. Do you know whether Mr. Lopez Landron was?
Ans. I have no knowledge whatsoever of any of her affairs.
Q. Do you know Don Rafael Lopez Landron?
Ans. Yes, sir.
Q. So far as his ability as a lawyer is concerned, how does he rank in his profession in Porto Rico?
Ans. He is reputed as a good lawyer, well learned.
Q. One of the brightest lawyers in the Island, isn't he?
Ans. Yes, sir.
Q. Did any of your children intermarry with any of the children of Doña Manuela?
Ans. Yes, sir; a son of mine is married to a daughter of Mrs. Manuela.
Q. What is his name?
Ans. Santiago Bienvenido Palmer.
Q. And what was her name?
Ans. Sarah Bustelo.
Q. If you can recollect, please state when they were married?
Ans. September 6, 1902.
Q. Who is the wife of Victor Burset?
Ans. Mrs. Carola Bustelo.
Q. Another daughter of Doña Manuela?
Ans. Yes, sir.
320 Q. What have been the relations between you and your family and Victor Burset?
Ans. At that time?
Q. Yes, at the time that Doña Manuela died.

Ans. At the death of Mrs. Manuel I hardly knew Victor Burset; I just simply knew him.

Q. When did you first come to know or get acquainted with Victor Burset?

Ans. Personal acquaintance, I think it was about the time of the death of Mrs. Manuela. I knew him before by sight.

Q. Did you state when Doña Manuela died?

Ans. About June or July of 1902.

Q. From that time on did you form an intimate acquaintance with him?

Ans. Yes, sir; and with the Bustelo daughters. We lived next door to the house where Doña Manuela died.

Q. So your families were very intimate?

Ans. Yes, sir.

Q. Did you have any business relations with Mr. Victor Burset in the years 1901-02?

Ans. In 1902 yes, but not in 1901.

Q. What were these business relations in 1902?

Ans. The business relation that I had with him and the only one was the proposition made by him to me that I should accept the transfer of a rural estate in Naguabo.

Q. Of several or one?

Ans. Of several rural estates at Naguabo.

Q. Before what Notary was that transfer made?

Ans. Diaz Navaro.

Q. Did you pay to Victor Burset for that property the sum of $43,330?

Ans. The amount of $43,330 was stipulated in the contract for the sole purpose of giving more legal value to the contract, but the transfer itself was received by him in consideration of the prestige that I enjoyed in the community for the purpose of obtaining a higher price than the $43,330.

Q. As a matter of fact then I understand that no money was paid by you to him?

Ans. It was stated in the deed that $13,330 were delivered in cash.

Q. Did you deliver that amount in cash?

Ans. Yes, sir; and on leaving the Notary's office I gave it back again.

Q. Who gave it back to you?

Ans. Mr. Victor Burset.

Q. After you got out of the Notary's office?

Ans. Yes, sir; after leaving the Notary's office.

321 Q. What business was Victor Burset engaged in at that time?

Ans. I do not know.

Q. Did he have any business?

Ans. I suppose that he had some other business but I know that he lived out of the income of the properties. And I have an idea that he was employed at the Notary's office of Hernandez Lopez.

Q. As a Clerk?

Ans. Yes, sir.

Q. Do you know of his having any business, commercial or any other kind?

Ans. Since I knew him intimately only after the death of Mrs. Manuela I don't know.

Q. Do you know how long he claimed to have been the owner of these properties which he transferred to you before he transferred them to you?

Ans. I don't remember that. I know that when the contract between him and me was made he exhibited to me the titles which he had deeded over to him from Mrs. Manuela, duly registered and duly performed.

Q. Do you recollect when this little transaction took place before the Notary Diaz when he transferred this property to you?

Ans. July 6, 1902.

Q. July 6th?

Ans. Yes, sir; it seems to me that date.

Q. Didn't you know that he had not got the deed to those properties from Manuela Gutman until the 30th of April of that same year?

Ans. I saw the titles deeded over to him by Doña Manuela but I don't remember the dates.

Q. If that be a fact that Doña Manuela did not transfer these properties to Victor Burset until April 30, 1902, and on the 6th of July, 1902, Burset transferred them to you, how do you explain that he was living on the rents of these properties?

Ans. No, I said that he lived out of the income from those properties after I purchased from him because after that I knew it of my own knowledge because I turned them over to him, because I simply had the property on commission for the sale.

Q. What was the state of health of Doña Manuela Gutman for the few months prior to her death in 1902?

Ans. I don't know that. Just on account of the engagement between my son and her daughter, to which engagement I was opposed on account of the youth of my son, I had social intercourse but it was not intimate.

Q. But Doña Manuela lived next door to you. You had seen her from time to time.

Ans. Yes, sir.

Q. Was she a lady in robust vigorous health for the few months prior to her death?

Ans. I think so. I often saw her going out driving, and I also saw her going to the theatre.

322 Q. About what was her age when she died?

Ans. I don't know; I heard them say she was fifty odd years of age.

Q. Did Victor Burset live with her?

Ans. Yes, sir.

Q. Did he seem to assist her and look after her interests and affairs?

Ans. As to that I do not know. I know that he lived with her but I was not intimate. I did not visit the house.

Q. Victor Burset was the oldest son-in-law?
Ans. Yes, of those that I knew of her sons in law.
Q. At that time just before the death of Mrs. Manuela, Mr. Burset was the oldest of the sons-in-law?
Ans. She didn't have any other.
Q. She had no sons either, did she?
Ans. Yes, sir; she had two.
Q. How old were they?
Ans. In view of the fact that I knew the husband of Mrs. Manuela because he was a judge of one of the District Courts and I knew when he got married, I think that the age of the oldest son was from 21 to 22 years.
Q. At the time of the death of Mrs. Manuela, were not these two boys in school in the United States?
Ans. There was one of them.
Q. Which was that, the older or the younger?
Ans. The older.
Q. And what was the age of the younger boy?
Ans. I don't know but I think he was about 20.
Q. Do you know the age of Mr. Victor Burset, more or less?
Ans. No, sir.
Q. In addition to this payment of $13,000 which passed from you to Burset and from Burset back to you that day, did you pay any other sum of money for that property?
Ans. There remained 30,000 pesos for the mortgage of Ygarividez.
Q. That mortgage was a mortgage that you or Victor Burset had put on there, was it not?
Ans. When I bought it the mortgage was already constituted.
Q. Was any attorney representing Mr. Burset in this transaction, or you?
Ans. No, sir.
Q. Didn't you see Mr. Lopez Landron taking any part in that transaction?
Ans. With regards to me Mr. Lopez Landron did not participate. As to the other side I cannot tell.
323 Q. Did you make the mortgage or was it on the property when you bought it?
Ans. The mortgage was already on it.
Q. It was made by Victor Burset?
Ans. As to that I don't remember. I think so; either by him or by Mrs. Manuela.
Q. Do you remember that that mortgage was made to one William Ygarividez Landron?
Ans. Yes, sir.
Q. Was he a brother of Lopez Landron?
Ans. I do not know.
Q. Then you never paid that mortgage or any sum of money whatsoever for this property which Burset transferred to you, other than the $13,000 which you paid and which were paid back to you?

Ans. Yes, inasmuch as I receive that sum as commission for the sale in order that a larger price might be received.

Q. What was the idea; that your standing and reputation in the community was much better than that of Burset?

Ans. I had more important relations and also on account of my profession. I also have a number of other estates on commission too.

Q. Then you immediately gave a power of attorney back to Victor Burset appointing him attorney in fact to do as he pleased with that property?

Ans. Yes, sir; in order that he might collect the income or rentals and in fact to act as owner thereof because I was simply holding it on commission.

Q. And from that time you didn't give the property any attention; you allowed him to do what he pleased in connection with it?

Ans. No, sir; a portion of it was leased to Messrs. Garzot & Fuertes and another portion was sold to Garzot & Fuertes.

Q. And this portion which was leased to Garzot & Fuertes is the property called "Culo Prieto"?

Ans. I don't know the names very well, but I think one portion of the estate is called "Cercado Ramirez;" another "Cercado Torres" and another is called "Rialta."

Q. Do you recollect of the cancellation of that mortgage in favor of William Ygarividez Landron August 26, 1902, two months after your deal?

Ans. I don't remember the date accurately.

Q. Isn't it a fact that the property that you sold, or Burset acting as your attorney in fact sold, to Garzot & Fuertes is the one called "Cercado de Ramirez," composed of 350 acres, for $15,750?

Ans. Yes, sir; something like that.

Q. Who got that money?

Ans. It was received by Mr. Burset for the purpose of turning it over to Mr. Ygarividez.

324 Q. You mean to William Ygarividez Landron?

Ans. To the holder of the mortgage, Guillermo Ygarividez Landron.

Q. Did the whole of that mortgage go to Mr. Landron?

Ans. Yes, sir.

Q. Assuming that that cancellation of that Landron mortgage says that you delivered to him in the presence of the Notary that sum of $30,000, is that correct?

Ans. No, sir; I trusted the matters to Victor Burset.

Q. Then that is not correct; you did not pay that sum of money?

Ans. Yes, sir; the amount was paid but through Mr. Victor Burset.

Q. Was it your money? Did you pay $30,000?

Ans. Yes, sir.

Q. You paid $30,000 to Landron?

Ans. Yes, sir; as a result of the sale to Garzot & Fuertes of the 300 and odd cuerdas.

Q. The sale to Garzot & Fuertes was for 15,750 pesos, of which 6,535 was represented by a mortgage given by them and the bal-

ance was cash amounting to 9,215. Now then did you pay that Landron mortgage of 30,000 pesos with the 9,215 cash which you got from Garzot & Fuertes?

Ans. No, sir; with additional cash.

Q. Cash of your own money?

Ans. Yes, sir.

(By the COURT:)

Q. Ask if he meant to say that he got the difference from the sale of another of his own properties?

Ans. No, sir.

(By Mr. DEXTER:)

Q. You just took it out of the bank or out of your own funds?

Ans. Yes, sir; of my own money.

Q. What was the difference that you paid over to Landron?

Ans. Something like 20 or 21 thousand.

Q. And that sum of money you paid out of your own resources there in the presence of the Notary?

Ans. Yes, sir.

Q. How, by a check?

Ans. I did not appear in person at the Notary's office. I trusted the whole thing to Victor Burset.

325 Q. Whom did you give this money to?

Ans. To Victor Burset.

Q. In what shape, cash or check?

Ans. In bills.

Q. Did you send out to the bank and get those bills?

Ans. No, sir; I didn't send out and get them.

Q. Did you have them in your house?

Ans. Yes, sir.

Q. Do you recollect the denominations of those bills?

Ans. No, sir; I don't remember. They were of different denominations.

Q. How did you come to give that money to Victor Burset? Did you get any security for it?

Ans. I had as security the lands themselves.

Q. No mortgage was made when you transferred part of the property subsequently to Garzot & Fuertes?

Ans. No, sir.

Q. And the balance of the property has since been sold to other parties, hasn't it?

Ans. Which?

Q. The balance which remained.

Ans. That is already sold by me but the deed is not given because it is pending the decision of this suit.

Q. You have never recovered that money back from Burset have you?

Ans. No, sir; because I have the property which I have sold.

Q. That is still owing to you by Victor Burset, is it?

Ans. Yes, sir; in order that I may collect it out of the proceeds of the sales of the properties.

Q. And it has been owing to you since the date that mortgage was cancelled?

Ans. Yes, sir.

Q. That is a credit which you have owing to you by Victor Burset?

Ans. Yes, sir.

Q. Have you got a note?

Ans. No, sir; I have not; I am guaranteed by the deed made out in my favor.

Q. Have you got a written receipt?

Ans. No, sir; I haven't anything.

Q. Do you keep books, or did you at that time?

Ans. No, sir; just simply notes. I have just simply private notes or memorandums.

Q. You said a moment ago that as to the remaining properties which had not been sold to Garzot & Fuertes, you had come to terms with somebody about a sale?

Ans. Yes, sir.

326 Q. And did I understand you to say that a deed, an "escritura," had been formed?

Ans. Yes, sir; I had it already drawn up and its registration is pending until this suit is settled.

Q. What notary drew that deed?

Ans. Before Notary Cæsar Gonzalez.

Q. Was it signed up by the parties?

Ans. Yes, sir; it was in August of last year.

Q. Do you know whether that deed went with the protocol to the Supreme Court?

Ans. No, sir; it is included among the papers in the archives of my notary which is in charge of Cæsar Gonzalez.

Q. Do you remember the date of August of last year?

Ans. It was from the 5th to the 8th, between those two dates. I don't remember whether it was on the 6th or 7th.

Q. To whom were the properties sold?

Ans. To Mr. Manuel Gonzalez Fernandez.

Q. Of what place?

Ans. Of Rio Grande.

Q. At what price?

Ans. $30,000.

Q. Cash, or deferred payment?

Ans. Cash; it is so stated in the deed.

Q. How much interest are you charging Burset on the $20,000 and odd that you loaned him that day?

Ans. None; no interest.

Q. Did you get these bills that you gave him out of a safe or where did you get them?

Ans. Those bills are part of a reserved amount which belongs to my wife, which she has inherited. She has inherited three times

and I never use that amount unless I have some transaction of this kind. Then I pay it back to her.

Q. Were you keeping these bills there in the house? Had them there some time?

Ans. Yes, sir; she keeps them as she would her jewelry.

Q. In a safe?

Ans. In a coffer or box as she would her jewels.

Q. How long had they been in that box?

Ans. A long time, and, although I do not think I am compelled to explain the facts in the matter, still I would say that I have in my possession papers bearing the dates on which she received those amounts.

Q. When was the last payment made to your wife by virtue of these inheritances?

Ans. I think it was in 1898.

327. Q. What did Burset do with these $20,000 that you gave him that time?

Ans. Twenty odd thousand?

Q. Just how much was that, Mr. Palmer, $20,000 or $21,000?

Ans. I don't remember exactly the amount.

Q. It might have been $20,000 or $21,000 or $22,000?

Ans. I know it was something over $20,000, $20,000 and odd. I know it was to complete the amount.

Q. You are sure it wasn't 21,000 and something?

Ans. No, sir; it was not.

Q. It was under $21,000?

Ans. Yes, sir.

Q. And more than $20,000?

Ans. Yes, sir.

Q. But you don't remember the number of dollars?

Ans. No, sir.

Q. Do you know what Burset did with this money?

Ans. I don't know; probably paid Ygarividez.

Q. You didn't see what he did with it?

Ans. No, sir.

Q. He just put the money in his pocket and walked out of the house?

Ans. Yes, sir.

Q. Mr. Palmer, please state the name of your wife.

Ans. Catalina Romoguerra.

Q. Are you acquainted with the handwriting of your son Santiago B. Palmer?

Ans. Yes, sir.

Q. (Showing witness a document) Is that his handwriting and his signature?

Ans. Yes, sir.

(This document is marked "H" for identification.)

Q. Who is collecting the income of the remainder of these properties that have not been sold to Garzot & Fuertes?

Ans. I commissioned Mr. Burset to collect monthly.

Q. Do you know how much they are?
Ans. $175 per month.
Q. What occupation has Mr. Victor Burset now?
Ans. I do not know.
Q. Do you know if he has any occupation or profession?
Ans. He lives at Humacao. I do not know.
Q. Mr. Palmer, you have been a Notary Public here in the Island, have you not, a great many years?
Ans. Yes, sir; for 34 years.
328 Q. Do you know those lands that were transferred to you; have you ever seen them?
Ans. No, sir; never.
Q. Never have seen them?
Ans. No, sir.
Q. How much are they worth?
Ans. Those left to me, $30,000. $30,000 is the price I have secured on them.
Q. Have you not gone out to look at them to see what they are worth?
Ans. No, sir.
Q. You don't know how many are subject to cultivation, how many to pasture and how many to brush?
Ans. No, sir; I do not know because they are leased to Garzot & Fuertes.
Q. Who collects the money for that lease?
Ans. I have already stated that Mr. Victor Burset in my behalf has been collecting it.
Q. Has Mr. Burset got any property that you know of?
Ans. No, sir; I do not know.
Q. You have no objection to his collecting all the rents there though?
Ans. Absolutely none.
Q. Didn't you execute a deed, Mr. Palmer, to Doña Petronila Rios, wife of Paco Noya for part of that property?
Ans. I gave a power of attorney to Mr. Emilio Cuadra to execute a deed in favor of Petronila Rios, wife of Francisco Noya, for the amount of $4,000 which he received from Mr. Noya. The size of the estate is 100 cuerdas.
Q. You got $4,000, you say, from Mr. Noya for that?
Ans. Yes, sir.
Q. What is the name of that property?
Ans. It is a portion of Cercado Torres.
Q. You are sure of that?
Ans. Yes, sir.
Q. It isn't Islote Quiñones?
Ans. No, sir.
329 Q. You are quite sure of that?
Ans. Yes, sir; I am sure. Islote Quiñones bounds with it according to the instruments I have. Islote Torres measures 200 cuerdas and 100 of it were taken for Mrs. Petronila.
Q. When was that deed executed?

Ans. I executed that power in favor of Emilio Cuadra three or four days after Victor Burset made a deed in my favor. It was the first half of July.

Q. How was that money paid; that $4,000?

Ans. He paid it in cash.

Q. In bills?

Ans. Yes, sir.

Q. Where did the sale take place, here or in Humacao?

Ans. The contract took place here; the deed at Humacao. It was executed by Mr. Cuadra.

Q. Was that contract executed before a Notary?

Ans. No, sir.

Q. That was executed verbally?

Ans. Yes, sir.

Q. Did the money pass right here in San Juan?

Ans. Yes, sir.

Q. Who handed it to you?

Ans. Mr. Noya.

Q. In whose house?

Ans. In my house.

Q. Do you recollect that date?

Ans. During the first part of July it was; the date on which the power was executed.

Q. Are you sure of that?

Ans. In view of the fact that it is three years since; I know that the power of attorney was made during the first part of July and I know also that the contract was made about that time too.

Q. Before what Notary was that power made?

Ans. Before Diaz Navaro.

Q. And the money passed hands right then, did it, the same day?

Ans. Yes, sir.

Q. Are you sure of that?

Ans. Yes, sir.

Q. Will you explain then why the deed was not made until the 21st of November, 1902?

Ans. I cannot explain that because from the moment that I executed the power I did not deal directly with Mr. Noya or Mrs. Petronila.

Q. As soon as you gave the power to Mr. Cuadra to make the deed, Mr. Noya paid this $4,000 then and there?

Ans. Yes, sir.

Q. Although the deed was not made until the 21st of November, 1902?

Ans. I remember the deed was made some months afterwards but I don't know just when.

330 Q. What relation is Emilio Cuadra to Don José Maria Cuadra, the attorney?

Ans. I don't know.

Q. They both live at Humacao, don't they?

Ans. Yes, sir.

Q. Mr. Paco Noya produced this $4,000 in money in your house in bills?
Ans. Yes, sir.
Q. And delivered them to you in your house?
Ans. Yes, sir.
Q. Who were present; anybody else present?
Ans. I do not remember.
Q. What time of day was it?
Ans. I cannot remember that.
Q. What did you do with that money?
Ans. I kept that amount to pay up the Ygarividez mortgage. I am going to rectify. The $4,000 of Noya, I delivered it to Victor Burset.
Q. You don't mean to say that you kept that and applied it on the other mortgage?
Ans. No, sir.
Q. What did Victor Burset do with that money?
Ans. I don't know.
Q. Why didn't you keep that to apply on the 20,000 and odd pesos he owed you?
Ans. Because I had the 500 and odd cuerdas in my name to recover that amount.
Q. Have you ever asked Mr. Burset to pay that money?
Ans. No, sir.
Q. Never talked to him about it since have you in order that he should pay the money?
Ans. No, sir.
Q. And that was in 1902 that you advanced that money to him?
Ans. Yes, sir.
Q. Has your wife ever asked you for that money?
Ans. No, sir.
Q. Never spoke about it since?
Ans I pay her as I get money.
Q. How much have you paid her on account?
331 Ans. I don't think that in strictly private family affairs I have to answer any questions. I don't think she would demand any account from me.
Q. If you want your answer to go that way, all right.
Ans. If it is proper according to law.
Q. You are the best judge of that if you don't want to answer.
Mr. DEXTER: That is all.

Cross-examination.

(By Mr. PETTINGILL:)

Q. Then I understand from your testimony, Mr. Palmer, that outside of the conveyance you made to Mrs. Petronila Rios, that Victor Burset under your power of attorney is handling that property.
Ans. Yes, sir.
Q. And that you claim no furter interest in it than the return of this amount that you advanced to pay off the mortgage.

Ans. Yes, sir; to collect the commission that I have in those cases.

(By the COURT:)

Q. Have you received any commissions yet?

Ans. It is pending until I collect the proceeds of the sale from Mr. Gonzalez.

Q. He has been handling this property now for some years and his agent has been collecting the rents. Does he get any commission or revenue for the use of his name?

Ans. No, sir; not from that.

Q. If this son-in-law, Victor Burset is collecting under your power of attorney, what does he do with the rents? He has stated that immediately on getting this title he gave a power of attorney to Victor Burset?

Ans. Yes, sir.

Q. Now has that man as agent collected any rents?

Ans. Yes, sir; he has always collected the rents.

Q. As his agent does he account to him for the rents or what does he do with them?

Ans. He keeps them inasmuch as I had the property on commission, the products of the same are kept by Mr. Burset.

Q. Then really he was Burset's agent instead of Burset being his agent?

Ans. Yes, sir; and he also is in charge of those matters because I hadn't time to attend to it myself.

Witness retires.

332 Witness: ANGEL GONZALEZ.

Direct examination.

(By Mr. DEXTER:)

Q. State your name please in full.

Ans. Angel Gonzalez.

Q. Your occupation?

Ans. Merchant.

Q. What business house are you connected with?

Ans. Ochoa Bros.; attorney in fact for them.

Q. Where are they engaged in business?

Ans. 48 Fortaleza.

Q. What is the general character of their business?

Ans. Principally banking.

Q. Do you recollect of a transaction in 1902 in which Mr. Victor Burset appeared in representation of Doña Manuela Gutman?

Ans. I do not remember whether in behalf of Mrs. Manuela Gutman, Mr. Victor Burset made any transaction.

Q. Just state what the transaction was.

Ans. I cannot tell you accurately the date on which Mr. Victor Burset pledged with us some jewelry to secure a loan made to him.

Q. Do you know whose jewelry it was?

Ans. In our opinion it was Mr. Burset's.

Q. At any time after that were you told anything different?

Mr. PETTINGILL: We object to what he was told.

Q. Well by Mr. Burset or by Doña Manuela Gutman?

Ans. No, sir; never.

Q. Was that lady's or gentleman's jewelry?

Mr. PETTINGILL: We object to that as calling for an opinion.

Q. What was that jewelry?

Ans. I cannot tell accurately, but, more or less, I can state that one of them was a cross with diamounds, some diamond ear-rings; two or three rings, also diamonds; and a lady's brooch and a watch.

333 Q. Did you know Doña Manuela Gutman?

Ans. No, sir.

Q. Well, by sight?

Ans. No, sir.

Q. What was done with that jewelry?

Ans. They were released either by Mr. Burset or by an agent. I cannot at this moment recollect.

Q. For what amount were they pledged?

Ans. I do not know exactly, but I think it was for a thousand and odd dollars.

Q. Can you remember, more or less, the month of the year 1902?

Ans. I cannot tell the year or the month.

Q. I thought you said it was in 1902.

Ans. No.

Q. How long ago was it?

Ans. I could not tell whether it was a year or two years ago.

Q. In what month was it?

Ans. They were taken back either in April or May.

Q. Wasn't there a document drawn up before Notary Benitez before that jewelry was pledged?

Ans. Yes, sir.

Q. Who were the parties to it?

Ans. Mr. Ochoa and Mr. Victor Burset.

Q. Was the debt paid when due?

Ans. Yes, sir.

Q. You didn't advertise them for auction?

Ans. Yes, sir; but before they were sold at auction they were reclaimed.

Q. What rate of interest was paid?

Ans. I suppose it was 1%.

Q. 1% a month?

Ans. Yes, sir.

Q. Do you know where Mr. Burset got the money to pay that?

Ans. No, sir.

Mr. DEXTER: That is all.

Cross-examination.

(By Mr. PETTINGILL:)

Q. How long was the loan for; how long did you keep the jewelry?
Ans. I don't know for a fact; I think it was 3 or 4 months. It was extended.
334 Q. How long then from the time it was made until it was paid?
Ans. I believe it was from five to six months.
Mr. PETTINGILL: That is all.

Witness retires.

Witness: JOSÉ A. RAMIREZ Y GONZALEZ.

Direct examination.

(By Mr. DEXTER:)

Q. Please state your name in full.
Ans. José A. Ramirez y Gonzalez.
Q. Where do you reside?
Ans. At Humacao.
Q. How long have you lived there?
Ans. Since the first part of 1883; 20 and odd years ago.
Q. Have you known or do you know Victor Burset?
Ans. Yes, sir.
Q. Where did you know him?
Ans. At Humacao.
Q. How long did you know him there?
Ans. Ever since he came back from Barcelona.
Q. How long ago was that?
Ans. It was before the American invasion that he came back from Barcelona.
Q. Was there anybody else in Humacao by the name of Victor Burset?
Ans. There is not any other.
Q. How big a town is Humacao, more or less?
Ans. Around 4800 inhabitants.
Q. How often did you see Victor Burset since the time he returned from Barcelona and while he was living in Humacao?
Ans. Very frequently; almost daily.
Q. What business was he engaged in there, if any? What occupation did he have?
Ans. The first position that I knew that he held was as clerk in the Registrar's office of Mr. Piñol.
Q. Was that before or after the invasion?
Ans. Before.
335 Q. Well after that, do you know what occupation he had?
Ans. No, sir; because he got that position right after he came back from Barcelona.
Q. When he left that position, do you know what other occupation he engaged in?

Ans. Yes, sir; he got a position at the City Hall as a clerk in the municipal treasury.

Q. Do you know, more or less, what the salary of that position was?

Ans. I don't remember very well, but I think it was about $20 or $25 a month.

Q. How long was he there?

Ans. He held that position until the occupation of the town by the American troops.

Q. And after that do you know what occupation he engaged in?

Ans. I think he continued holding that same position until he was appointed municipal treasurer of the same place.

Q. How long did he hold that position of municipal treasurer of Humacao?

Ans. I think he held that position until 1902.

Q. Do you know what salary he got as treasurer?

Ans. I think that the salary fixed in the budget was $45 per month.

Q. Do you know whether he had any property or business?

Ans. Up to that time, no.

Q. Do you know whether up to that time he was a man of large means or not?

Ans. He was not; at least I didn't know him to have any more than the property left by his father.

Q. What *rp*operty was that, if you know, that he inherited?

Ans. I think the whole inheritance for all the children of the estate of his father was $9,000.

Q. How many brothers were there, or children?

Ans. Four brothers and the mother; the property was divisible in half.

Q. Did he engage in any other business besides these employments that he had?

Ans. No, sir; I don't know that he had any other.

Q. Where did he live at Humacao while he was occupying these official positions?

Ans. Before he married he lived with his mother.

Q. Well, after his marriage?

Ans. After the marriage he lived in a house by himself in Rosaria Street.

Q. Have you occupied any official positions in Humacao?

Ans. I am holding it at present, and prior too.

336 Q. What official positions did you hold before?

Ans. I have been a member of the council on several occasions; also a member of the school board, and at present I am holding the position of Marshal of the District Court of Humacao.

Q. Are you acquainted with the properties in Humacao which formerly belonged to the estate of Don José Maria Rios?

Ans. Yes, sir; I know them.

Q. Have you seen them?

Ans. Yes, sir.

Q. Are you acquainted with the values of property in the jurisdiction of Humacao and Naguabo; the price per acre?

Ans. Market value?

Q. Market value, yes. Ask him whether he knows the value of land in that vicinity, more or less?

Ans. Yes, sir.

Q. Have you had occasion to consider the values of property in that district?

Ans. I have been on several occasions assessor of property.

Q. Do you know prices at which land is being sold in that locality?

Ans. Yes, sir.

Q. Do you know the property called "Cercado Ramirez, composed of 350 cuerdas?

Ans. Yes, sir; I know it.

Q. What kind of a property is it?

Ans. It is a very good quality of land.

Q. What is it adapted for?

Ans. I have always known it to be devoted to pasture.

Q. How much would they be worth per acre, in your judgment?

Mr. PETTINGILL: We object to that as improper. The value of property has changed.

Q. Did you know that property in 1902?

Ans. Yes, sir; even before.

Q. Can you state what that was worth?

Ans. The average price per acre?

Q. Yes.

Ans. $90 per acre.

Q. Is there any part of that land which cannot be used; which is not good?

Ans. There is a small portion of it, that bounding with a cocoa-nut grove of Buso is low land which is marshy land.

Q. About how many acres are there of that kind of land?

Ans. About thirty acres, more or less.

Q. And what would that be worth?

Ans. It may be valued at $10 an acre; from $10 to $15 would be its price.

337 Q. If that property were composed of 350 cuerdas, what would be the value of that property in the condition it was in 1902 with these 30 acres of inferior land?

Ans. I figure the average value per acre at that time at $90.00.

Q. You mean the average value of the whole 350?

Ans. Yes, sir; of the whole amount.

Q. That would be $31,500?

Ans. Yes, sir.

Q. Do you recollect the purchase of that property by Messrs. Garzot & Fuertes in 1902?

Ans. Yes, sir; I heard about it.

Q. Do you know the price at which they bought it?

Ans. No, sir; I am not familiar with the transaction.

Q. If that property was sold in 1902 for $15,750, would you call that a low or a high price?

Ans. Very low.

Q. Do you know the other properties of the estate of José Maria Rios in the jurisdictions of Humacao and Naguabo?

Ans. Yes, sir.

Q. Can you state what the value of a property composed of 150 cuerdas in 1902, called "Islote Rivalta," in barrio Rio Abajo, jurisdiction of Naguabo; do you know what property that is?

Ans. Is it not a portion of that property which is located in the district of Naguabo, which is called "Islote"?

Q. This is the finca or property adjoining the lands of Juan Busó on the North and bounded on the East by the Rio Viejo; on the South by the Rio Blanco Moderno.

Ans. That is the same; very fine land.

Q. In your judgment, what was that worth in 1902 per acre?

Ans. Those lands, taking them all together, I don't think, as I said before, that they could be worth less than $90 per acre on an average.

Q. Now the property known by the name of "Madam Duran," composed of 107 cuerdas, in the jurisdiction of Naguabo.

Ans. No, sir.

Bounded on the North by the Rio Blanco which separates it from "Cercado Ramirez" and on the West by the Rio Blanco which separates it from the "Cercado Ramirez"; do you recognize that property now?

Ans. Is there a river on the North side of the estate?

Q. Yes; Rio Blanco; composed of 107 cuerdas. What, in your judgment, was that worth in 1902?

Ans. All those lands situated on the right hand side of the river are all about the same quality.

Q. The property called "Los Puentes" in the same barrio of Rio Abajo, is that the same kind of land?

Ans. Very fine lands also, although a great portion of it is marshy land.

338 Q. The "Cercado de Torres" also called "Maizales" composed of 223 cuerdas, do you know that property?

Ans. I am not acquainted really with that property. I know it simply by passing by.

Q. You know what property it is?

Ans. I don't know it.

Q. Bounded on the North by lands of Pereyó.

Ans. I know very well the Pereyó lands.

Q. This is on the South of that. On the South it is bounded by "Islote Quiñones," from which it is separated by the river.

Ans. If it bounds with the Pereyó lands it bounds with the river.

Q. On the West it is bounded with the Gallardo property.

Ans. I know the Gallardo property.

Q. Now do you know the property I refer to?

Ans. Yes, sir; I know; all that is very fine land.

Q. What was the value of that property in 1902 per acre?

Ans. The same appreciation might be made of this, although I might mention the fact that they are still better than the other because they are dryer.

Q. Do you know the "Islote Quiñones" which is today owned by Petronila Noya, wife of Francisco Noya?

Ans. I believe I have seen sugar cane planted there.

Q. That is in the jurisdiction of Rio Abajo, bounded on the North by the Rio Viejo.

Ans. Yes, sir; it is very good land. I figure that at $100 per acre.

Q. That is at the present time?

Ans. Yes, sir.

Q. What was it worth in 1902?

Ans. About the same; if anything, very little less.

Q. If that was sold in 1902 for $4,000, was that a low or high price?

Ans. Bad.

Q. Do you know the Attorney Rafael Lopez Landron?

Ans. I know him.

Q. Do you know what reputation he enjoys in the community as a lawyer?

Ans. As a bright, intelligent man.

Q. One of the best lawyers in the land?

Ans. Undoubtedly.

Mr. DEXTER: That is all.

339 Cross-examination.

(By Mr. HERNANDEZ LOPEZ:)

Q. You said that Mr. Victor Burset was a clerk in the municipal treasury?

Ans. Yes, sir.

Q. Are you sure of it?

Ans. Yes, sir.

Q. Don't you think it was Mr. José Burset, his brother?

Ans. I think Mr. José Burset was also a clerk in the treasurer's office where Mr. Victor Burset was, and to prove it better, he was appointed upon my recommendation.

Q. Don't you think that Mr. Victor Burset was chief clerk of the secretary's office of the municipal government, instead of a clerk at the treasurer's office?

Ans. No, sir; he was not in the secretary's office, but in the treasurer's office of the municipal government. I don't know what was the title given to the position he held, but most undoubtedly he was the clerk in the treasury department of the municipal government.

Q. Was he not also comptroller and treasurer?

Ans. I don't know whether or not he was comptroller, but I know he was treasurer.

Q. At the same time that Victor Burset was an employé of the municipal government, was not Jose Burset an employé of the municipal government?

Ans. I do not know whether they were employees at the same time.

Q. Are you a surveyor?

Ans. No, sir.

Q. Have you ever been a farmer?

Ans. That is exactly my profession or occupation.

Q. What kind of a farmer are you?

Ans. Agriculturist and sugar cane planter particularly, which I have been for a period of thirty years.

Q. Have you owned land yourself?

Ans. I have been the lessee of two sugar cane properties at Hamacao for 20 years, and prior to that, manager of sugar plantation "Carmen" belonging to Mr. Finlay and also "St. Vincent" of Naguabo.

Q. But did you ever have any sugar plantation of your own?

Ans. No, sir; but I was lessee for 20 years.

Q. Which were those sugar cane plantations which you had rented for 20 years?

Ans. Buena Vista belonging to Latimer and plantation Josefa.

Q. Were they all located at Humacao?

Ans. Yes, sir.

Q. Right at Humacao?

Ans. Yes, sir.

340 Q. Do you remember how much you paid for the lease of those properties?

Ans. Yes, sir; for the Buena Vista I paid $2500 a year and also the annual taxes and all the liens or incumbrances on the property, which in all amounted to not less than $4,000 per annum.

Q. How many acres?

Ans. 1,000 acres.

Q. Did that plantation have a mill?

Ans. Magnificient kind of machinery which yielded 1,000 hogsheads of brown sugar.

Q. Which was the other plantation?

Ans. "Josefa" belonged to Juna Bertran.

Q. How much did you pay for the lease of that?

Ans. First 2,000 pesos and afterwards 2,500.

Q. Provincial currency?

Ans. Yes, sir; both; taxes and all other expenses or incumbrances.

Q. Of how many acres did the "Josefa" consist?

Ans. About 470 and odd cuerdas.

Q. Did it also have machinery for the manufacture of sugar?

Ans. Yes, sir; and distillery.

Q. What kind of machinery had it?

Ans. Steam power for the manufacture of brown sugar.

Q. What value did you figure on the "Buena Vista"?

Ans. It was worth about 30,000 pesos.

Q. The acreage of that plantation being 1,000 cuerdas and considering the price you give to it of 30,000 pesos, provincial currency, what would be the value per acre?

Ans. The greater portion of that property is of inferior quality; a great deal of it is useless or unprofitable or unproductive land.

Q. How many acres did it have of real productive land of those 1,000 cuerdas?

Ans. From 90 to 100 acres suitable for sugar cane growing.

Q. What price would you put on those 80 to 100 acres of sugar cane land?

Ans. $60 an acre.

Q. 60 pesos, provincial currency?

Ans. Yes, sir.

341 Q. In what year did you have those properties leased?

Ans. Up to 1897.

Q. To what time does the witness refer when fixing the price of that plantation at $30,000?

Ans. At the time I had it leased.

Q. 1897?

Ans. Up to that year 1897.

Mr. DEXTER: That is objected to as being too remote.

Q. Would that $30,000 be the price of the plantation for 1902?

Ans. The value of that property in that year 1902 must necessarily have changed because by that time the San Siriaco cyclone occurred in the Island and the effect of it must have shown on the property.

Q. So that in 1902 that property was not worth $30,000?

Ans. Undoubtedly no.

Q. Did the depreciation of that property affect in the same way all the other properties of the same kind as Buena Vista?

Ans. Undoubtedly yes, those analogous to Buena Vista, inasmuch as all the establishments of the plantations such as machinery rooms disappeared or were destroyed.

Q. Therefore does the witness consider the value of the Buena Vista in 1902 depreciated by virtue of the cyclone which occurred in 1899?

Ans. Yes, sir.

Q. And all the plantations analogous to it?

Ans. Yes, sir.

Q. What value would you put to the other plantation "Josefa" which you had also leased in 1902?

A. When I leased that property it was exactly after the purchase of it by Juan Bertran for 30,000 pesos and by virtue of the lease which I had executed with him, all the improvements to be made thereon were to be made on my account, such as putting up machinery buildings and cultivation labor; all of which represented to me a very large amount, which makes a necessary conclusion that the value of the property would be much more than $30,000, and the cyclone devastated it all, including the machinery, etc.

Q. Let us imagine for a moment that the San Ciriaco cyclone never visited the Island, what would be in 1902 the price of an acre of land in that vicinity?

Ans. The best price that could be obtained for the best quality of land on the "Buena Vista" would be $50 an acre. That price dropped down to $2 or $3 per acre, which is the value that

342 could be obtained for a greater portion of the property today.

Q. That price of $50 or $60 per acre is under the supposition that no cyclone visited the Island, but since the cyclone visited the Island in that year, what would be the price in 1902?

Ans. The same price or perhaps less.

Q. How much less?

Ans. From $40 to $45 per acre as a maximum and from $2 to $3 per acre as a minimum.

Q. Is that calculation made by you applicable to the "Josefa" plantation?

Ans. No, sir.

Q. Do the same figures apply with regard to the "Josefa" plantation?

Ans. The lands of the "Josefa" plantation I would not value at less than $100 to $125 per acre as an average.

Q. That is the maximum price.

Ans. As a true value of the land suitable for any cultivation.

Q. What was the depreciation of those lands in 1902 on account of the cyclone?

Ans. No depreciation from those prices.

Q. What are your reasons that you give for that difference in price from $100 to $125 per acre and $50 to $60 in the other?

(Not answered.)

(By the COURT:)

Q. Didn't he say a while ago that the price was down to only $2 per acre?

Ans. That was the Buena Vista; considering the Buena Vista, the prices are from $40 to $45 as a maximum down to $2 or $3 per acre.

(By Mr. HERNANDEZ LOPEZ:)

Q. Explain now that difference.

Ans. The difference can be explained very well by the difference in quality of the land. The lands of Buena Vista, as I said before, large portions of them are useless on account of not being suitable for any kind of cultivation.

Q. Let the witness understand accurately. I refer to the best portions of both plantations; why that difference from $50 to $100 as comparing the good portions of land of both plantations?

Ans. That can be explained very well. The lands of the "Josefa" are on the left hand side of the river and are alluvial lands where the top soil is very deep. Buena Vista land is formed by gravel washed down to them from the hills which are composed of clays or a stony soil.

Q. So that the difference in the price depends on the composition of the soil?

Ans. Yes, sir.

343 Q. Notwithstanding that sugar cane was grown both at Buena Vista and at Josefa?

Ans. Yes, sir.

Q. You have stated before that you know the property purchased by Garzot y Fuertes?

Ans. Yes, sir.

Q. From whom did Garzot y Fuertes buy those lands?

Ans. I do not know from whom they bought it.

Q. When you stated that you know the lands purchased by Garzot y Fuertes, to what lands do you refer?

Ans. I haven't referred to any purchase at all.

Q. To what lands did you refer that were purchased by Garzot y Fuertes, that, although they were purchased at $15,000, you thought it was too low a price for it?

Ans. To the properties formerly described here, such as "Cercado Ramierz," "Islote" and others mentioned.

Q. But what amount of land?

Ans. 375 acres.

Q. Do you know those 375 acres to which you refer?

Ans. I know the estate as a whole, but not in detail. Those portions such as "Islote," "Cercado Ramires" I know because they have been shown to me.

Q. Those 375 acres to which the witness has referred, do they constitute the property known as "Cercado Ramirez"?

Ans. "Cercado Ramirez" is not so much; it is smaller than that.

Q. How many acres?

Ans. I think the "Cercado Ramirez" has 300 and odd acres.

Q. The whole property, about how much is it?

Ans. 1200 acres I think.

Q. How does the witness know of that property as a whole.

Ans. By passing by it.

Q. Does the witness know the composition of the soil of those lands?

Ans. If the question is to be answered specifically, I would say no because that would require a special study or knowledge which I lack. As to the rest, I could answer the same as I said with regard to the "Josefa" plantation, that is to say, that they are alluvial lands.

344 Q. Well you said you knew the "Josefa" plantation on account of having had it leased.

Ans. Yes, sir.

Q. That is to say you cultivated it.

Ans. Yes, sir.

Q. And you just stated that you know that other estate by passing by it?

Ans. You don't need more than that to pass upon it.

Q. It is sufficient to pass by land to know its composition?

Ans. Not minutely or in detail, but that would require a technical study, but for a practical farmer a superficial knowledge is all that is necessary, especially if the top soil has been removed.

Q. In order to appreciate the depth of the top soil is it sufficient to pass by?

Ans. In certain lands it is sufficient; by looking at the banks

of the river and noticing the color of the soil which tells a good deal. It is enough to look at it.

Q. What does the witness want us to understand by passing by the "finca;" to go through it or pass along the road?

Ans. To go near it.

Q. Go through the property itself?

Ans. Yes, sir.

Q. For what purpose did the witness pass through that property?

Ans. I went through it on several occasions for different purposes.

Q. On account of having it on lease?

Ans. No, sir; due to other business.

Q. Not as an employé of the estate?

Ans. No, sir.

Q. Passing through it for other purposes?

Ans. Yes, sir.

Q. And had nothing to do with the property?

Ans. No, sir.

Q. When passing through that property did the witness analyze or examine the soil in order to appreciate its value?

Ans. No, sir; but just on account of my calling of being an agriculturist, I am in the habit when passing by property of observing the land, the cultivation to which it is put, etc.

Q. So that when the witness passed through that property his thoughts were concentrated on the value of the land?

Ans. Not as to the value of the lands, but I certainly admired the vegetation and the quality of the land.

Q. Had the witness ever had any intention of purchasing those lands?

Ans. No, sir; I never had, not through lack of desire, but through lack of the means necessary.

Q. What did the witness see that the property was planted with when he passed through it?

Ans. Very tall "malojilla" grass.

345 Q. Only "malojilla"?

Ans. And cattle.

Q. So that those 1200 acres were devoted to "malojilla," pasture land and to cattle only?

Ans. Yes, sir; that is all.

Q. Did the witness see that in 1902?

Ans. It is a good many years since I have been observing it.

Q. I mean in 1902.

Ans. Long before that date and even up to now, very recently I had occasion to look at that property.

Q. My question is if you passed through that property in 1902 and saw it.

Ans. I don't remember exactly whether in 1902 I passed through it; I stated that in 1902 I don't remember whether I passed by it or through it.

Q. When you passed by that property did you pass always through the same place or through a different place each time?

Ans. When I passed through there I have been accompanied by somebody else who took me each time by a different trail.

Q. That property has trails or narrow roads, has it?

Ans. Yes, sir; trails.

Q. Has it many trails?

Ans. I don't know.

Q. On which of the trails of the property did you pass?

Ans. The ones I was led through. As it happens in all of that portion of land up to Humacao, on going through the valley land of that vicinity, people go through it according to the weather. Sometimes they go through the higher portions or through the lower as the weather is dry or wet.

Q. So that you went through the property travelling, did you?

Ans. Yes, sir; and I went through it for other purposes.

Q. Travelling on horseback?

Ans. Yes, sir.

Q. Led by a guide?

Ans. By a companion, not by a guide exactly.

Q. You don't remember having passed through that property in 1902?

Ans. I don't remember whether I passed through it that year.

Q. You cannot tell us for a fact that you went through that property in 1902?

Ans. No, sir.

Q. You cannot also state in what condition that property was in 1902? In what cultivation it was?

Ans. No, sir.

346 Q. Now tell us, the lands of a property devoted to pasture, has it the same value as land devoted to sugar cane growing?

Ans. No, sir; as a rule, no, but there are exceptions.

Q. What are they?

Ans. There is an opportunity to mention again, the best land of Buena Vista, that those fine lands if applied to sugar cane, never had the same value that those situated here at Naguabo, even if devoted to pasture land.

Q. But in general terms, do you think that pasture land and sugar cane land is the same?

Ans. No, sir.

Q. What portion of that property of 1200 acres was purchased by Garzot y Fuertes?

Ans. It is understood that it is "Cercado Ramirez" and Islote; I think that in that portion of land was the 375 acres.

Q. Do you know from whom Garzot y Fuertes purchased that 375 acres?

Ans. No, sir.

Q. Do you know the price they paid for it?

Ans. Just as I know everything else. The price I was told they paid was 15,000 and odd pesos, at the time that transaction was effected.

Q. Who told you that?

Ans. The people in Humacao because that operation was commented upon considerably.

Q. Can't you tell us who the party was who told you that?

Ans. It was referred to as every transaction of importance is spoken of in towns like that.

Q. So that the knowledge you have of that transaction was by public rumor. You said that that price of 15,000 and odd pesos paid for that 375 cuerdas is too low. Why?

Ans. Because in my judgment the lands are worth more.

347 Q. I asked the question how he came to judge the value of the property.

Ans. From the knowledge I have of all those lands from Naguabo to Humacao of that jurisdiction, and as a farmer.

Q. The knowledge you have of that property is simply from the fact of having passed by there?

Ans. Yes, sir; from having passed by there.

Q. How do you figure out the value per acre of that land?

Ans. At present?

Q. In 1902.

Ans. $90.00.

Q. And now?

Ans. I value it now at a much higher price; all those lands around there.

Q. In 1902 when you say the lands were worth $90, under what cultivation were they?

Ans. At that time they were all pasture lands.

Q. Did you not say that in 1902 that you could not state whether you passed by this "finca"?

Ans. I said it and I repeat it again; I cannot tell whether in 1902 was one of the times I passed by that property.

Q. How can you, notwithstanding the fact, state that the properties were devoted to *l*asture lands?

Ans. Because before and after and always I have not seen anything else but pasture land around there.

Q. But did you see those lands in 1902?

Ans. I repeat again that I cannot state accurately whether I saw it at that time.

Q. By the knowledge that you have of that property, are they of the same quality? You know that there are first, second and third class lands, don't you?

Ans. Excepting the marshy land, they are all alike, in fact not only that thousand acres but the same thing refers to thousands and thousands of acres around there in that same neighborhood.

Q. How much marshy land did those 375 acres contain?

Ans. From 30 to 35 acres.

Q. Do you know whether sugar cane has ev*e*n been planted there?

Ans. Not right there, but on the other side.

Q. No sugar cane has ev*e*n been grown on those 375 acres?

Ans. Not that I know of.

Q. You haven't seen it growing there?

Ans. No, sir.

348 Redirect examination.

(By Mr. DEXTER:)

Q. The fact that sugar cane has never been grown there makes the land all the richer, doesn't it?

Ans. Undoubtedly.

Q. Now the depreciation which you spoke about, which resulted from the cyclone, that referred only to properties which had buildings on?

Ans. Others, far from being injured, were benefitted.

Q. In what way? How do you explain the benefit after the cyclone?

Ans. Simply on account of the flood that followed that cyclone, which brought down to those plains a lot of vegetable soil, improving them.

Q. Are you related in any manner to Doña Maria Rios?

Ans. No, sir; in no manner whatsoever.

Q. Have you any interest in this case?

Ans. Absolutely none whatsoever.

Mr. DEXTER: That is all.

Witness retires.

Mr. DEXTER: Complainant offers in evidence certificate of the Registrar of Property of the district of Humacao, relating to the description of the properties, the subject of this suit, prior to the purchase by Garzot y Fuertes.

Mr. PETTINGILL: We have no objection to this Exhibit. The question of translation carries us back to the same question. This is a recital by the Registrar that upon that appeal of the dominion proceedings—the Interpreter has translated it that the appeal was dismissed. That same discussion was had before when the plea of *res adjudicata* was up. The Supreme Court directly ordered the Registrar to record that deed. The Registrar uses the word "improcedente," to the translation of which we object. The word means that it was decided, there being no ground of appeal; that it was decided on the merits and not on the form.

Mr. Dexter reads paper to the Court and it is marked Exhibit "H" for the Complainant.

349 EXHIBIT "H" FOR THE COMPLAINANT.

I, Don José R. Aponte, fiscal of the district court of this city, substituting the Registrar of Property Don José Toro Rios, Certify:

That on folio 39 of Vol. 9 of the municipality of Naguabo, corresponding to the modern registry, there appears the following inscription, to wit:

No. 2 of the Property No. 451 which reads as follows:

2. Rural estate called "Cercado Ramirez" which situation and other circumstances appear in the inscription first preceding in the same manner that in the document presented, the boundaries being as follows: On the north, by the lands of Don Juan Burzó and others called "San Francisco;" on the east by Don José Perez

Villamil, to-day Don Prudencio Bariola, with a ditch between, formerly Don Fco. Burzó, by lands of Don Juan R. Garzot and Don Ramon P. Villamil, formerly Don Francisco Burzó, until the mouth of the river Blanco; on the south by the Rio Blanco which separates it from the lands of Don José C. Borges, of Don Prudencio Bariola and the estate named "las Puentes;" and on the west by the Rio Blanco which separates it by the estate named "Madam Duran" belonging to Lady Gutman and of lands of the Succession of Don Ramon Argueso, formerly Don Pedro Lebron, and by part of the arm of the river Viejo which separates it from the estate "Islote Rivalta" of Lady Gutman. It does not appear to be affected *to* any incumbrances. Its value is $15,900.00. Doña Manuela Gutman de Lara, widow of Bustelo, land-owner,
350 of age, and resident of San Juan; Doña Maria Rios y Gutman, widow of Rubio, landowner, of age, and of this vicinity, and Doña Patricia Petronila of the same surnames, accompanied by her husband Don Francisco Noya Frias, of age, land-owner, and of the same residence, applied to the district court of this district instituting proceedings to establish the dominion of this property and twelve more, which belong, that of this number and six more inscribed at the place where it is stated in the marginal note, Doña Manuela Gutman de Lara and the other remaining six situated in the barrio of Anton Ruiz de Humacao, to Doña Maria and Doña Petronila Patricia Rios y Gutman, the acquisition being through title of settlement in a private agreement made by said ladies on the 16th of January, 1901, and desiring to inscribe the dominion of the same they requested, being represented, Doña Manuela by the lawyer Don Rafael Lopez Landron, Doña Maria and Doña Patricia Petronila by the lawyer Don José Maria Cuadra, that through the legal steps it should be declared that the dominion has been established. The fiscal having been heard and there having been summoned and heard the ladies Doña Petra Rios, widow of Toro, as heir of Don José Maria Rios, Doña Petronila Berrios and Doña Emilia Rios y Berrios, Doña Amalia Rios y Pou, or her legitimate representative Don José Toro Risô, Don Emilio and Don Alfonso Faura, as heirs of Doña Avelina Rios y Pou, Doña Josefa Soler y Rios de Roquefort as heir of Doña Josefa Rios, the proceedings were conducted with the formalities prescribed by Article 395 of the Mortgage Law, there having been summoned in accordance with the provision of Sec. 2 of said Article nominally by edicts and advertis-ments in the Official Gazette, the absentees, Doña Avelina, Doña America, Doña Josefa and Doña Carmen Faura, Don José Pou y Rios and Don Narciso Soler Rios. The lawyer Cuadra having withdrawn as representative of the lady Rios, widow of Rubio, there entered his appearance on the 31st of August, 1901, the lawyer Don Juan F. Vías as attorney for said lady, oppos-
ing the dominion title proceedings instituted as regards her
351 title of acquisition, requesting that the same should be approved by virtue of the intestate inheritance of her son Don José Rios Gutman, the corresponding part of Doña Manuela Gutman, and by virtue of testate inheritance from Don José Rios y Berrios the corresponding part of Doña María and Doña Patricia Petronila

Rios, decision being rendered on the 16th day of November last signed in Guayama by the presiding Judge Don Salvador Fulladosa and the associate justices Don J. M. Kearney and Don Jacinto Texidor before the secretary Don José R. Aponte, approving the proceedings and ordering the inscription of the same in this registry, and as regards this property, in favor of Doña Manuela Gutman without limitation nor reservation of usufruct, and having taken an appeal of cassation for violation of law to the Supreme Court the said Lawyer Señor Vias, the same was dismissed for each and every one of the grounds upon which it was based. In virtue whereof, having examined the registry and it appearing therefrom that in favor of Doña Avelina Rios there appears inscribed an interest of 87 cuerdas, *6337*-1000ths of another, through inheritance from Don José María Rios, and that there have been summoned and heard the heirs of Doña Avelina Rios, Don Emilio and Don Alfonso Faura, without making any opposition thereto, and having summoned nominally the absentees by means of the official papers and edicts, the said Doña Avelina, Doña Emerita, Doña Josefa and Doña Carmen Faura and Don José Pou y Rios without making any opposition, and in accordance with rule 5 of Article 395 aforesaid, I inscribe the full dominion of this property in favor of Doña Manuela Gutman de Lara, widow of Bustelo by title of settlement in a private agreement and without limitation or reservation of usufruct. In the document there are included 12 properties more inscribed at the place where is stated in the marginal note. The presentation and other circumstances appear in the inscription extension No. 1, made on folio 172 of Vol. 19 of the municipality of Humacao to which I refer.

Humacao, July 1, 1902.

(Signed) PORRATA, *Substitute.*

352 I further certify:

That at Fol. 43 of said Vol. 9 of Naguabo there appears the inscription third of the property No. 451, which is the same above mentioned, which literal description reads as follows:

Rural estate described in the foregoing inscription in the same manner that in the document presented. It does not appear to be affected with any incumbrances. Doña Manuela Gutman de Lara, widow of Bustelo, resident of San Juan, of age, land-owner, is the owner of this property by title through settlement in private agreement, it being stated in the title that she acquired it through inheritance from Don José Maria Rios y Berrios, as it is thus stated in the foregoing inscription, and with that title she transferred together with six more to her neighbor Don Victor Burset Masferrer, married, employé, of age, for the price, all of them, of forty three thousand three hundred dollars, of which she acknowledged to have received in cash at the time of the execution of the deed and to which the notary executing the same gave faith, $37,690.00, and the $5,610.00 remaining shall be paid by the purchase by account of the seller Lady Gutman, the said Lady Gutman having stated in said sale that she bound herself to duly perfect the title so that

this deed could be inscribed without obstacles in the registry of property of the district. A copy of said deed of sale having been presented in this registry for its inscription the same was refused because it appeared that six of the properties included therein were inscribed partly in favor of Doña Avelina Rios, in consequence whereof the notary executing said deed took an appeal and the Supreme Court having ordered on the 28th of March last to make at the margin of the entry of presentation a note of suspension of the running of the time in conformity with the last paragraph of Art. 66 of the Mortgage Law until said appeal could be decided; and there having been corrected the defects which caused the said refusal by virtue of the dominion title proceedings approved by the Supreme Court of this island on the 4th of June last, which proceedings have been presented simultaneously with the deed re-
353 ferred to to the effect of correcting the errors above mentioned, at 9 A. M. of the 27th of June last, within the extended time granted by order of the supreme court aforesaid, in consequence whereof I do hereby make the inscription of the deed of sale aforesaid in favor of Señor Burset. In virtue whereof I inscribe in favor of Don Victor Burset Mansferrer the property of this number through title of purchase, giving to the inscription a retroactive effect for the purposes of Art. 28 of said Mortgage Law, to the date of the entry of presentation. The other circumstances appear in the extensive inscription 2 on folio 234 of Vol. 10 of Naguabo to which I refer.

Humacao, July 1, 1902.

(Signed) PORRATA, *Substitute.*

The foregoing is certified to by the fiscal of the district court of Humacao acting as registrar of property on the 30th of January, 1905.

(Signed) JOSÉ R. APONTE.

There is a seal of the registry.

(Signed) M. S. GEIGEL,
Int. U. S. Court.

354 Witness: FRANCISCO BUSO CABRERA.

Direct examination.

(By Mr. DEXTER:)

Q. Please state your name, residence and occupation.

Ans. Francisco Busó Cabrera; residence at Humacao and agriculturalist.

Q. Do you occupy any official position at the present time?

Ans. No, sir.

Q. Have you at any time in the past held any official position?

Ans. I was Mayor of the town of Humacao.

Q. When; about what period?

Ans. Since the month of March, 1900 until January of 1903.

Q. Where do you live?

Ans. At Humacao.

Q. What occupation have you? I did not understand.

Ans. Agriculturalist or farmer.

Q. Where are your properties?

Ans. At Naguabo and Humacao.

Q. What kind of lands?

Ans. Those at Naguabo are pasture land.

Q. I mean what kind of cultivation do you devote yourself to, cane cultivation or what?

Ans. At Naguabo to pasture and grass and at Humacao I have cotton, oranges and pasture.

Q. How long have you lived in Humacao or in that vicinity?

Ans. I have lived in Humacao since the month of June, 1888.

Q. And before that time where did you live?

Ans. I lived at Naguabo since January, 1884.

Q. All your life where have you been living; in Porto Rico or in that vicinity?

Ans. I came back from Spain in January, '84 and I lived at Naguabo during those four years and a half and after that time I lived at Humacao.

Q. During all that time what has been your occupation?

Ans. During the time I was at Naguabo I was a cattle raiser and at Humacao I have worked both as an engineer and as a planter.

Q. Did you know Manuela Gutman?

Ans. I knew her.

Q. Do you know the properties composing the estate of Don José Rios y Berrios?

Ans. You mean the real property?

Q. Yes, the "fincas" or properties.

355 Ans. A great portion of those "fincas" bound with my Naguabo estate.

Q. These properties that were left by Don José Maria Rios y Berrios and which formed his estate, are they made up of different tracts separated from each other or do they make up one property?

Ans. He left lands both at Naguabo and at Humacao.

Q. I mean how are they situated with reference to each other. Are they all in one tract or in different tracts separate from each other?

Ans. The lands at Naguabo are very near those that belonged to him at Humacao and my property at Naguabo separates his estate at Naguabo from that at Humacao. There are portions of the property at Naguabo with which I am not acquainted.

Q. Are you acquainted with a property known as "Cercado Ramirez" of 350 acres, more or less, which were purchased by Garzot y Fuertes?

Ans. I know "Cercado Ramirez." I haven't any knowledge of the extension of the same. I have never measured it; never had charge of it. That estate is between a property of my family at Naguabo and another estate of mine at Naguabo.

Q. Are you able to state the value of that estate "Cercado Ramirez" in 1902? The value per acre?

Ans. That property has never lost its merits; it has always been very good.

Q. In 1902 what was it worth?

Ans. From $85 to $90.

Q. Assuming that that property sold in 1902 for $15,750, would you regard that as a good price or a low price?

Ans. The selling price of an estate depends upon the pressing necessities of the vendor and the needs also of the purchaser, but in my opinion the sale is cheap; the purchase price is very low.

Q. If that property was composed in 1902 of 350 acres, how much would it have been worth; can you make that simple calculation?

Ans. I think the amount I have already stated, $85 or $90.

Q. At $90 it would be $31,500.

Ans. That is a very simple arithmetical calculation.

Q. Do you know the property which has the name of "Islote" or "Islote Rivalta"?

Ans. Yes, sir, I know it.

Q. Do you know about how much that property was worth in 1902?

Ans. That "finca" is as good if not better than "Cercado Ramirez." I think it is better.

Q. How much would you think it was worth in 1902?

Ans. It ought not be worth less than $90 per acre.

Q. What kind of lands were they in 1902; what were
356 they adapted for.

Ans. They are lands situated on the margins of the river, adapted to pasture, "malojilla" grass.

Q. What are they adapted for; what kinds of cultivation?

Ans. As pasture land they are first class and sugar cane land I also think might be first class too. The cultivation might be a little costly, but the yield might be very good.

Q. Do you know the property that has the name of "Madam Duran"?

Ans. Yes, sir; it bounds with mine.

Q. What kind of lands are they?

Ans. The lands of "Madam Duran" are somewhat inferior to those of "Islote" and "Ramirez."

Q. What, in your judgment, was the value of that estate in 1902?

Ans. From $65 to $70, as a small portion of it is high land.

Q. What are those lands adapted for?

Ans. For pasture and sugar cane.

Q. Do you know the property bearing the name of "Los Puentes"?

Ans. "Los Puentes" is mine.

Q. There must be two. This is a property called "Los Puentes" composed of 36 cuerdas; bounded on the north by lands of Juan Busó and the Rio Blanco, which separates it from the "Cercado Ramirez."

Ans. Do I not know that it had that many cuerdas? This is a small parcel of land in the same estate.

Q. You know then to what parcel of land I refer.

Ans. Yes, sir.

Q. What class of land is that?

Ans. In my judgment it is the same as "Cercado Ramirez."

Q. In your judgment what value did it have in 1902?

Ans. I consider it the same as "Cercado Ramirez."

Q. Do you know the property known as "Cercado de Torres" or "Maizales"?

Ans. I know it by reference. I have been in it but I don't know the boundary lines.

Q. Do you know the character of lands composing that property?

Ans. I am not well acquainted with the soil of "Maizales." I cannot tell it by the name.

Q. It is a property containing 223 acres, situated in the barrio of Rio Abajo, in the jurisdiction of Naguabo, bounded on the North by lands of Jesus Pereyó, formerly owned by Esteban Garriga; on the East by lands of Pereyó, formerly owned by Garriga; on the South by "Islote Quiñones," the Rio Blanco intervening; and on the West by the Rio Blanco which separates it from lands of Villamil and Gallardo. Do you know the property now?

Ans. Yes, sir; it is the same class of land as the "Islote." The "Islote" and all those lands are of the same quality; all one tract.

357 Q. You testified that the "Islote" was worth $90 per acre in 1902.

Ans. In my judgment there is no difference between "Islote Quiñones and the others.

Mr. Dexter: Tell him he was mistaken. He testified about the "Islote Rivalta," not the "Islote Quiñones."

Q. Do you know the "Cercado Maldonado," composed of 38 cuerdas, situated in the barrio of Rio Abajo, bounded on the North by lands of Jesus Pereyó, formerly of Rodulfo Maldonado, on the east by a creek which separates it from lands of Jesus Pereyó formerly owned by Maldonado; on the South by the Rio Viejo which separates it from "Islote Quiñones"; on the West by a creek which separates it from the lands of "Cercado de Torres." Do you know that property?

Ans. I cannot fix in my mind exactly the position of that "finca."

Q. You know the "Islote Quiñones."

Ans. Yes, sir.

Q. If it joins that property, do you know the character of the land and the value of it in 1902?

Ans. There is one of the boundary lines which mixed me up, which is that which bounds with the lands of Mr. Pereyó. There is a part of Pereyó's property which cannot be compared with the lands of "Islote." It is inferior. There is a portion of it which bounds with that property of Pereyó, which is leased by Gustavo Preston and is planted to cane. If that is "Cercado Maldonado"

it is good land, but not as good as the lowest part of "Islote." It is a clay loam and in some portions of it has not a proper amount of sand.

Q. What is the meaning of "Islote?"

Ans. A tract of land surrounded by water, either by rivers, brooks, canals or any kind of water; isolated either by brooks, rivers or any kind of water. The "Islote" is not so separated, but in times of flood you can see them separated.

Q. Are these "Islotes" good or bad land generally?

Ans. Very good; very fertile.

Q. Why is that; why are the "Islotes" better lands than the others?

Ans. Because they are alluvial.

Q. You stated that you knew the property called "Islote Quiñones."

Ans. Yes, sir; I have gone to "Islote Quiñones to purchase cattle.

Q. In your judgment what was that worth in 1902? Per acre?

Ans. $90.00.

Q. What is the principal industry in that section of the Island?

Ans. Up to the present, cattle.

Q. What kind of cultivation?

Ans. The property belonging to the succession of Rios?

358 Q. Yes; all those properties I have asked you about.

Ans. Up to the time I left Naguabo they were all dedicated to pasture. Afterwards I saw sugar cane planted on them by Gustav Preston, on a portion of them.

Q. In 1902 were there any sugar cane factories in the vicinity of these properties?

Ans. The small plantation of Pereyó.

Q. Do you know Victor Burset?

Ans. Yes, sir.

Q. How long have you known him?

Ans. I don't remember the date when he came to Humacao, but I know him well; I have been personally acquainted with him since 1889.

Q. Where did he live before he came to Humacao?

Ans. I know by hearsay that he lived at Barcelona.

Q. You don't know in what town of the Island he lived before he came to Humacao?

Ans. No, sir.

Q. In what year was it he came to Humacao?

Ans. I don't remember the date when he came to Humacao.

Q. Well, more or less.

Ans. Well I remember having personal acquaintance with him from the year of the cyclone, but he had already been at Humacao for two years prior to that.

Q. Do you know what occupation he had after he arrived at Humacao?

Ans. I don't know what he was doing up to the time I found him in the employ of the municipal offices.

Q. What time was it you found him employed in the municipal offices?

Ans. When I took possession of the office of Alcalde.

Q. After you assumed the office of Alcalde, did you retain him in his position?

Ans. He was employed in the Alcalde's office up to the beginning of the fiscal year 1901-2.

Q. Do you know what salary he was getting in that position?

Ans. I cannot tell whether it was $40 or $45.

Q. When did he leave the Alcalde's office?

Ans. He left the office at the end of June, 1901.

Q. And then what occupation did he have?

Ans. He didn't do anything in Humacao. A short time afterwards he came to San Juan to live.

Q. Do you know whether he had any business or employment other than the occupation you have spoken of?

Ans. No, sir; when he was at the Alcaldia, he was not engaged in any other business.

Q. At that time do you know whether he was a wealthy man or not?

Ans. He lived out of his salary.

359 Q. Do you know whether he had any real estate or any other property?

Ans. He was one of the heirs of an estate, but the properties of that estate were mortgaged and I don't think the mortgage was ever raised.

Q. Was that a large and valuable estate or of what value, more or less?

Ans. It was an inheritance left by his father-in-law.

Q. What did it consist of?

Ans. An hacienda which was formerly a sugar cane plantation; hilly land, very poor quality; low lands of worse quality than the hilly ones, very damp. At that time the property was reduced in size; they had to give up something like 150 cuerdas.

Q. About how many acres was the property composed of?

Ans. I haven't an accurate idea of the amounts, but what was left was not worth very much.

Q. Well, about how much, more or less; do you know the value?

Ans. They didn't amount to anything because they lost it all.

Q. Do you know where Mr. Burset lived in Humacao?

Ans. Yes, sir.

Q. Whose property was that on which he lived, if you know?

Ans. When he married he lived in a house given to his wife as a present by her mother.

Q. Doña Manuela Gutman?

Ans. Yes, sir.

Mr. DEXTER: That is all.

Cross-examination.

(By Mr. HERNANDEZ LOPEZ).

Q. You have stated that you have a property which bounds with "Cercado Ramirez"?

Ans. Yes, sir.

Q. That property which you have which bounds with "Cercado Ramirez" is the same as regards the quality of the land as "Cercado Ramirez"?

Ans. It is the same quality; yes, sir.

360 Q. Those lands belonging to you bounding with "Cercado Ramirez," which you have just referred to, were they inherited by you from your father?

Ans. They were acquired by my **grandfather.**

Q. And they passed over to you by inheritance or by purchase?

Ans. I purchased them from my father.

Q. Did you buy them from your father?

Ans. Yes, sir.

Q. The value of the lands referred to by you, was it lower or higher in 1902?

Ans. I don't know.

Q. Was it the same as in previous years?

Ans. I don't think there is any reason why they should come down or depreciate.

Q. So that it might be assured on general terms that those lands in 1902 were worth the same as before?

Ans. What might be assured is that at that date they were worth more than before and that they are worth more every day.

Q. Why that increase?

Ans. Properties around that neighborhood are increasing in value because sugar cane centrals are being established and before there were no means of planting cane.

361 Q. Therefore you don't refer to the intrinsic value of the land, but to circumstantial value.

Ans. Yes, sir; I am referring to intrinsic value. If I had in consideration the circumstantial value, I would have gone up higher in price.

Q. But let the witness tell me, those lands increased in value on account of the establishment of centrals, on account of the facility to plant sugar cane. Doesn't that constitute a circumstantial value?

Ans. That is why I have not taken those circumstances into consideration in giving the prices.

Q. I refer to the testimony of the witness that the lands increased and they have so increased in 1902.

Ans. I have simply limited myself to answer the question as to whether the lands have not depreciated.

Q. And the witness answered that they had increased; that in 1902 they were worth more.

Ans. The Attorney was asking me for prior dates.

Q. The last question was the increased value up to 1902 and the witness said to me that it was due to the establishment of sugar cane

centrals and the planting of sugar cane, and I asked the witness whether or not in your judgment that was not a circumstantial value.

Ans. I think the Attorney is mixing up two or three questions and two or three answers.

Q. Will the witness please answer the question, why that increase?

Ans. Will the Attorney please tell me to what increase he refers.

Q. The witness said that in 1902 the value increased.

Ans. The Attorney asked me to give him the price in 1902 as compared with previous years.

Q. I will ask the witness the same question: Were those lands worth the same in 1902 as in previous years?

Ans. They were worth the same as before. When a thing increases in value it is worth the same as before with that increase.

Q. That is not my question. Were those lands worth more in 1902 than in prior years?

Ans. They were worth more.

Q. Why?

Ans. Because there was a larger demand.

Q. What demand?

Ans. Of land.

Q. Don't you think that that was a circumstantial value, in your judgment?

Ans. Yes, sir.

Q. Did you purchase from your father in 1902?

Ans. No, sir.

362 Q. In what year?

Ans. I don't remember the year; long before that.

Q. Did not the witness at that time sell another property which you had around there, composed of 60 cuerdas?

Ans. I didn't sell it.

Q. Have you not sold any portion of the land purchased from your father?

Ans. No, sir.

Q. Those bounding with "Cercado Ramirez"?

Ans. No, sir.

Q. Nor any other place?

Ans. No, sir.

Q. Has not the witness made any negotiation of land at that time?

Ans. I gave a "finca" in guarantee of a debt incurred by my father.

Q. I mean bargain and sale.

Ans. No, sir.

Q. Aren't lands devoted to pasture of the same class for the reason that they are devoted to pasture?

Ans. No, sir.

Q. There are several kinds of pasture lands?

Ans. Yes, sir.

Q. What does that difference consist of?

Ans. Of the class of pasture; there are good and bad pasture lands.

Q. Those lands of "Cercado Ramirez;" what kind of pasture did they have?

Ans. All "malojilla."

Q. The whole 350 acres?

Ans. I said before I don't know the size of the "Cercado Ramirez." I cannot speak of it by the number of acres.

Q. To what number of cuerdas planted to "malojilla" does the witness refer?

Ans. The whole of the property is planted in "malojilla."

Q. Well an approximate calculation, what is the extension of that property?

Ans. What property?

Q. Of the "Cercado Ramirez," that which you stated is planted in "malojilla," more or less.

Ans. "Islote" is also planted in "malojilla."

Q. I mean the portion of "Cercado Ramirez."

Ans. To be more particular, the portion bought by Garzot & Fuertes; I learned here that they had purchased a piece of land, but I don't know what portion of the land they have purchased. I know about the purchase made by them, of what we have
363 always known as "Cercado Ramirez" separated by a ditch from the estate of my family at Naguabo, called "Fuertes," bounded with the cocoanut grove of my cousin at Naguabo and on the North, a portion of it, by a "finca" which was at one time my property. But I don't know on that side of the estate how far the "Cercado Ramirez" extends and I cannot state up to that place how many acres the "finca" has, but the portion of that estate, the boundaries of which I can fix, may measure from 90 to 100 cuerdas.

Q. Those 90 to 100 cuerdas are those that are planted in "malojilla," as the witness has stated.

Ans. There is a small portion of it that is swampy land.

Q. A portion of those 90 or 100 acres described by the witness?

Ans. A portion of "Cercado Ramirez" consists of swampy land and I do not think that portion is suitable for pasture.

Q. But that portion of the land which you know, those 90 or 100 acres to which you have referred; the witness spoke about 90 or 100 acres. Outside of those limits, the balance of the property is known by the witness?

Ans. Yes, sir.

Q. Are they also planted in "malojilla?"

Ans. Yes, sir.

Q. The witness has stated that he learned here of the purchase by Garzot & Fuertes?

Ans. Yes, sir.

Q. Did you find out right here in court?

Ans. Yes, sir; the size of the property and the price paid for it; yes, sir.

Q. Today?

Ans. Yes, sir.

Q. Will the witness please tell me; do you think that the selling price and the intrinsic value of property are the same?

Ans. I have already answered that.

Q. Is the witness in the habit of looking into the quality of the land in order to arrive at a valuation of it?

Ans. Yes, sir.

Q. The witness offers land for sale, that is the selling price. Is the selling price and the intrinsic value always the same?

Ans. It is very rare that the intrinsic value and the selling price would be the same.

Q. Is the selling price always less than the intrinsic value?

Ans. Sometimes it is greater.

Q. And is it sometimes less?

Ans. Yes, sir.

Mr. HERNANDEZ LOPEZ: That is all.

Witness retires.

364 Witness: HARRY P. FALLON.

Direct examination.

(By Mr. DEXTER:)

Q. Please state your name in full.

Ans. Harry P. Fallon.

Q. What is your occupation?

Ans. Clerk, Treasury Department of Porto Rico.

Q. What particular duties do you have in the Treasury Department?

Ans. In charge of the division of assessments.

Q. Have you brought, in response to a subpœna, the records of the Treasury Department of Porto Rico, showing the assessment of property in the name of Don Santiago R. Palmer?

Ans. Yes, sir.

Q. Have you got the records showing the assessment of his property or statements or "planillas" made by him since 1901?

Ans. According to our records no property appears in the name of Santiago R. Palmer in Naguabo in 1901-2.

Q. In those records do there appear any statements made by Santiago R. Palmer of any property owned by him since that year?

Ans. (Producing book) Here is a declaration made in the name of Santiago R. Palmer made by Victor Burset.

Q. What year is that?

Ans. Fiscal year 1902-3.

Mr. DEXTER: Complainant offers in evidence the "planilla" or declaration of property made by Santiago R. Palmer by Victor Burset for the years 1902-1903, which declaration was made on the 25th day of May, 1903.

Mr. PETTINGILL: No objection to that.

(*Translation of "Planilla" Made by Interpreter.*)

Declaration of Property—Taxes 1902-3.

Real Estate.
Taxpayer Santiago R. Palmer.
Municipal District of Naguabo.
Address: Allen Street No. 21, San Juan.
Barrio, Rio Abajo.

One rural property situated on the south of Naguabo, measuring 400 acres first class pasture and 515 acres second class pasture; value of the 400 acres of first class pasture, $24,000; value of the
365 515 acres second class pasture, $12,875. Total value, $36,875; frame house, value $200; total real property $37,075; total taxable property, $37,075. Taxes for 1903-4, $370.76. Each instalment, $92.69.

Oath.

I, —— ——, solemnly swear and state to the best of my knowledge and belief that the foregoing declaration is a correct and complete description of all the properties which I have or which belong to me in my own right or as partner, or that I have in my possession as attorney in fact, manager, guardian, agent or party in charge of the property of a minor or incapacitated person, and that the said property has been fully and truly described, its true value and its conditions having been stated; that I have not endeavored to deceive the assessor as to the amount or quality of the said property and that the deductions made of the credits was *bona fide* for value received and legal and they do not consist in any manner whatsoever of any alleged debts or any partnership, or any institution, society, corporation or company, and that I have neither converted or exchanged temporarily, either directly or indirectly, for another exempt from taxation or for any bonded indebtedness for the purpose of evading the value of the same for the purpose of taxation.

(S'g'd) SANTIAGO R. PALMER,
By VICTOR BURSET.

Signed this 25th day of May, 1903.
(S'g'd) A. C. HARSARD, *Assessor.*

366 Witness: SANTIAGO R. PALMER, Recalled.

Direct examinaiton.

(By Mr. DEXTER:)

Q. Mr. Palmer, will you please state whether or not you filed or presented a "planilla" to the Treasury Department of all personal property owned by you on the 25th day of May, 1903?

Ans. A "planilla" of the estate at Luquillo, or rather of an estate at Rio Grande, the hacienda "Catalina." I do not know whether it is subscribed to by me or by the major domo.

367 Q. Didn't you present a statement of personal property or property assessible for taxation for the year 1902-3?

Ans. Yes, sir; concerning the "finca" "Catalina."

Q. You don't call a "finca" or property, personal property, do you?

Q. We call a "finca" real property.

Q. I am asking you about personal property or "bienes muebles."

Ans. No, sir; not as personal property except those found within the "Catalina" plantation.

Q. You did not present any "planilla" of personal property or credits owned by you in 1902?

Ans. No, sir; I have never been in the habit of presenting them.

Q. Did you authorize Mr. Victor Burset to present any such "planilla" for you?

Ans. (Referring to "planilla") This is regards the "finca" at Naguabo.

Q. Please look at that "planilla" signed by Victor Burset as your power of attorney and state whether or not he had authority to sign that.

Ans. Yes, sir.

Q. This statement shows no personal property?

Ans. No, sir; I just simply authorized him with regard to the Naguabo "finca."

Q. The only thing then that you did list for that year was the Naguabo properties?

Ans. Yes, sir; I listed the "Catalina" plantation at Rio Grande. As regards the Naguabo estate, Mr. Victor Burset was in charge.

Q. Look at this "planilla" for the year 1903-4 and signed by Mr. Victor Burset as your power of attorney. Is that correct? Was that done by your authority?

Ans. Yes, sir; I gave him authority to act in the Naguabo property in my behalf.

Mr. DEXTER: Complainant now offers in evidence the statement of taxation of personal properties and credits, promissory notes, current accounts, mortgages, bonds or other personal property owned by Don Santiago R. Palmer on the 25th of May, 1903.

Mr. PETTINGILL: It is objected to on the ground of immateriality.

Mr. DEXTER: He says it is correct.

Mr. PETTINGILL: The fact that he admits it does not make it material.

The COURT: It is offered as to his credibility.

368 Mr. DEXTER: Yes, sir.

The COURT: The Court overrules the objection.

Mr. PETTINGILL: Save an exception.

(*Translation of Oath Made by Interpreter.*)

I solemnly swear and state to the best of my knowledge and belief that the foregoing declaration of property contains a complete and true description of all the property that I have or that belongs to me in my own right or as partner or which I have in my possession as attorney in fact, administrator, guardian, agent, or which I am in charge of as the agent of an incapacitated person, and that the said property has been fully and truly and accurately described, its true value and conditions having been stated. I have not endeavored to deceive the assessor as to the quantity or quality of the said property and that the deductions made therein for credits solicited are for *bona fide* debts for value received and legal and they do not consist in any manner whatsoever of alleged debts owed to any partnership, to any institution, society, corporation or company; that I have not converted or temporarily exchanged, either directly or indirectly, any part of my property for another exempt of taxation, nor for guaranteed debts, bonded indebtedness of any kind for the purpose of evading the assessment of the same for the purpose of taxation.

(S'g'd) SANTIAGO R. PALMER,
Per POWER VICTOR BURSET.

Subscribed and sworn to before me this 25th day of May, 1903.
(S'g'd) A. C. HARSARD, *Assessor.*

369 Mr. DEXTER: Complainant also offers the "planilla" or statement of real properties claimed to be owned by Santiago R. Palmer on the 25th day of May, 1903, showing total valuation of $13,375.

Mr. PETTINGILL: Same objection.

Q. According to this "planilla" or statement which was signed on the 25th of May, 1903, there were no mortgages, promisory notes, bonds or accounts current listed for that year?

Ans. No, sir; as regards the Naguabo "planilla," Mr. Victor Burset, my agent, knows all about it.

Q. I will ask you, Mr. Palmer, is it not a fact that your wife borrowed money through you from the Banco Español, the American Colonial Bank and the Territorial Bank in the year 1900 and every year since that time?

Ans. My wife never.

370 Q. In April, 1901, didn't you borrow for your wife the sum of $1,000 at the Spanish Bank with the guaranty of Don Mariano Riera Palmer and Don Tulio Larrinaga?

Ans. For my wife?

Q. Yes.

Ans. Never; I don't remember any such thing.

Q. You didn't make any such operation?

Ans. I have made operations but different ones; I have made different operations at both the Colonial Bank and the Spanish Bank; sometimes as debtor and on other occasions as the guaranty.

Cross-examination.

(By Mr. PETTINGILL:)

Q. Did I understand you to say on your former examination that the money had actually passed as the result of this deed to Manuel Gonzalez or that the payment of the consideration as well as the registry of the deed was pending the result of this suit?

Ans. Yes, sir.

Q. Which; you mean both are pending? I don't understand what he means by "yes."

Ans. That the registration or recording of the deed will be effected as soon as the result of this suit is known.

Q. What about the payment of the money from Gonzalez?

Ans. Also when the deed is legalized; when the registration is effected. A portion has been paid to me.

Redirect examination.

(By Mr. DEXTER:)

Q. Before what Notary was that deed made?

Ans. Julio Cæsar Gonzalez.

Q. He is your partner?

Ans. My substitute until tomorrow.

371 Q. He has your protocol and all the books of your office?

Ans. Yes, sir.

Q. You get the result of the income of the office?

Ans. No, sir; he receives it.

Q. You don't get anything for that?

Ans. Yes, sir; I have a share of it.

Mr. DEXTER: That is all.

Witness retires.

Witness: HARRY P. FALLON Recalled.

Direct examination.

(By Mr. DEXTER:)

Q. Mr. Fallon, will you please state whether in the records of your office you have examined and found any statement or "planilla" of property, real or personal, owned or claimed to be owned by Doña Catalina Romaguera, wife of Don Santiago Palmer in the year 1903-4?

Ans. A very careful search was made yesterday and this morning and no evidence is shown that Doña Catalina Romaguera ever declared any property.

Q. In those years?

Ans. In those years; yes, sir.

Mr. DEXTER: That is all.

Cross-examination.

(By Mr. PETTINGILL:)

Q. It is a fact that the "planillas" are entered in the different districts into which the Island is divided?
Ans. That is a hard question to answer because there are so many different districts, according to the municipal divisions.
Q. Each municipality has its own division then in your office?
Ans. Yes, sir.
Q. If a man has property in different municipalities, he makes as many different "planillas" as he has property in different municipal districts?
Ans. Yes, sir.

Redirect examination.

(By Mr. DEXTER:)

Q. But all of the "planillas" are sent to the general office?
Ans. All sent to our office.
Q. And after examination you don't find that Catalina Romaguera of Humacao owned any property at that time?
Ans. None at all.

Witness retires.

372 Witness: JESUS ALMIROTY.

Direct examination.

(By Mr. DEXTER:)

Q. What is your name?
Ans. Jesus Almiroty.
Q. Where do you live?
Ans. At present at San Juan.
Q. What is your occupation?
Ans. Business man or merchant.
Q. With whom are you employed?
Ans. I work all by myself.
Q. Where is your place of business?
Ans. No. 3 Cristo St.
Q. What class of business are you engaged in?
Ans. Printing office; newspaper business.
Q. Did you ever live at Humacao?
Ans. Yes, sir.
Q. Do you know Doña Maria Rios?
Ans. Yes, sir.
Q. Do you know Don Manuel Argueso?
Ans. Yes, sir.
Q. Were you employed by him in the year 1901?
Ans. Yes, sir.
Q. In what capacity?
Ans. As clerk.
Q. Did you sign the original of this document?

Ans. Yes, sir; I see my signature there.

Q. Did you witness the signatures of those parties who signed it?

Ans. I signed the instrument but I did not testify to anything.

Q. Where were you when you signed that document?

Ans. It is about three or four years since then; I don't remember exactly.

Q. Were you in the house of Doña Maria Rios when you signed that document?

Ans. No, sir.

373 Cross-examination.

(By Mr. PETTINGILL:)

Q. Did you go to the house of Doña Maria Rios one night after you had signed it?

Ans. I don't remember.

Q. Do you remember anything about the circumstances of having signed the document?

Ans. Mr. Argueso as my principal invited me to sign the instrument and I signed it.

Q. Where was that; do you remember?

Ans. I don't remember; it is four years since.

Q. Did you know anything about the character of the document at the time you signed it?

Ans. I heard said that a transaction was involved.

Q. Who gave you that information?

Ans. I remember now after examining it that I knew by the document having been read to me.

Q. Do you remember who read it to you?

Ans. No, sir.

Q. Do you remember where you were when you heard it read?

Ans. I do not remember.

Q. Do you remember being present when Doña Manuela Gutman signed it?

Ans. No, sir.

Q. Do you know whether you were present or not?

Ans. No, sir.

Q. I believe you have testified that you know Doña Maria Rios.

Ans. Yes, sir; I know her.

Q. Now about the time of your signing that document do you remember going one night to the house of Doña Maria Rios with Mr. Paco Noya, Rafael Lopez Landron, José Maria Cuadra and Don Manuel Argueso, your principal, going to Doña Maria's house one night?

Ans. I don't remember.

Q. Can you tell us whether you ever went with those gentlemen to her house one evening?

Ans. I have never visited the house of Doña Maria Rios.

Q. What do you mean by "visit"?

Ans. Going there socially.

Q. Were you ever within the house?

Ans. No, sir.

Q. Do you know where she lives?
Ans. I have been informed that she is today at San Juan.
Q. Were you not called as a witness in the Humacao Court in regard to this transaction?
Ans. No, sir; I have been absent from the Island a year and a half.
374 Q. When did you leave?
Ans. I left in October, 1902, or about then.
Q. 1902?
Ans. Yes, something like that.
Q. When did you return?
Ans. Six months ago, more or less.
Q. Well before you left were you not called as a witness as to the execution of this very same document, before the Court at Humacao?
Ans. I believe so; I am not certain but I believe that I have been summoned.
Q. Under that summons didn't you go and give testimony?
Ans. No, sir; I haven't testified at all.
Q. You are sure of that?
Ans. I have been summoned but I have not appeared.
Q. Did you ever come into court before to give testimony?
Ans. Yes, sir.
Q. How many times?
Ans. Two or three times only.
Q. Then if you had gone in response to that summons you would have been sure to remember it?
Ans. Yes; of course.
375 Q. Had that document been read to you before you signed or afterwards?
Ans. I don't remember, sir.
Q. Can you tell us whether at the time you signed it as a witness you were acquainted with its contents?
Ans. At the time of signing the document of course; on signing the document I had to know its contents.
Q. Did you read it yourself as well as having it read to you?
Ans. I don't remember, sir; the time elapsed since then.
Q. Could you recognize your own signature if you saw it? (Handing witness a document.) Do you recognize that signature?
Ans. Yes, sir.
Q. Is it yours?
Ans. Yes, sir.
Q. See what you have signed then. (Witness reads document.) Were you under oath when you made this statement?

Mr. DEXTER: We object to that; the document says that he was under oath.

Q. Do you remember now that you did make this declaration?
Ans. Which one?
Q. The one you have read here.
Ans. I suppose so; I see my signature affixed there.
Q. You still don't remember anything about it?

Ans. I don't remember the circumstances.
Q. Is it true what is stated here?
Ans. I believe it refers to that document.
Q. You have read this, haven't you?
Ans. Yes, sir.
Q. Do you know whether it is true or not? The statement you swear to here.
Ans. It may be true; I won't say that they are not.
Q. If it had not been true would you have sworn to it?

Mr. DEXTER: We admit that everything in that is true.
Mr. PETTINGILL: Counsel for defendants now request Counsel for complainant to furnish translation of said statement contained on page 19 and turned of the record of the *expediente dominio* already introduced into evidence.
(Interpreter translates for the information of the Court declaration or statement made by the witness under oath in the Humacao Court.)

Q. If you had entirely forgotten that you had made any such statement as that, is it not likely that you have also forgotten about going to Doña Maria Rios' house when it was done?
376 Ans. I remember perfectly well that I signed that instrument and I remember perfectly after seeing the signature which is mine, which is affixed to that instrument, but I don't remember the facts referred to by the Attorney.
Q. You didn't remember that you had signed any such document as that until I showed it to you, did you? And you stated positively that you had never gone to court and never made any such declaration.
Ans. I have affirmed that I do not remember having appeared before any court to make any declaration.
Q. You still don't remember making that declaration, do you?
Ans. No, sir.
Q. Then if you did that and forgot it, is it not just as likely that you went to Doña Maria's house with these gentlemen and forgot all about it?
Ans. I don't remember, sir; it is four years since.
Q. After seeing this instrument are you willing to take your positive oath that you did not go there with these gentlemen that night?
Ans. That is the same document I have just read. With regards to that question propounded to me, I cannot state under oath whether or not I did what was asked of me because I do not remember positively and I am not going to swear to a thing of which I am not certain.
Q. In January, 1901, were you living here or in Humacao?
Ans. I think I lived at Humacao.
Q. Wasn't it at that time that you were working for Don Manuel Argueso?
Ans. Yes, sir.
Q. At that time when you were living there, did you know where Doña Maria Rios lived there in town?

Ans. I do not remember the place where she lived.

Q. Did you know at that time where she lived?

Ans. I know that she lived at Humacao, but the place I do not know. I have to make a remark here. When I referred to the house of Mr. Argueso at that time, I was a very short time under his employ. I left for Humacao from San Juan so you can see that I did not have any information as to the place of residence of Mrs. Rios.

377 Q. Do you recollect while you were employed by Don Manuel Argueso of having gone out with these gentlemen to this lady's house for the purpose of seeing her sign at night?

Ans. No, sir; I do not remember.

Q. How long were you working for Mr. Argueso?

Ans. Approximately a year.

Q. During that time you lived at Humacao?

Ans. Yes, sir.

Q. What work did you do for Mr. Argueso?

Ans. In the office.

Q. Clerk or book-keeper?

Ans. Book-keeping and correspondence.

Q. Did you stay there longer after the year or did you come back to San Juan after you quit working for Mr. Argueso?

Ans. I continued living at Humacao.

Q. How long did you live at Humacao?

Ans. Until I left the Island.

Q. Until October, 1902?

Ans. Yes, sir; approximately, more or less.

Q. Have you had any conversation with Don Rafael Lopez Landron with regard to being present with him at the time of signing this instrument?

Ans. No, sir; I don't remember.

Mr. PETTINGILL: That is all.

(By the COURT:)

Q. Ask him how he came to sign that as a witness, who invited him to?

Ans. Mr. Argueso invited me.

(By Mr. DEXTER:)

Q. You signed that at the request of Mr. Argueso?

Ans. Yes, sir; he invited me to sign in view of the fact that I was employed at his house.

Q. Where was it that you signed that, Mr. Almiroty?

Ans. I don't remember, sir.

Q. Do you remember who was the attorney for Mr. Argueso at that time?

Ans. The affairs of the house, he always had Mr. Lopez Landron as his attorney.

Q. Mr. Almiroty, has Mr. Cuadra been talking to you about this case in the last few days; about your testimony here?

Ans. After exchanging the proper salutations, he told me that I

was to appear in this court to testify in the matter of the suit of Maria Rios.

378 Mr. DEXTER: That is all.

The COURT: Tell him he is a very good witness in telling us what he doesn't remember. I never heard a better one; but we want him to tell what he does know about it; that he is an intelligent man and must remember something of it.

Ans. Memory is very fragile and really the time elapsed since is so long and the affair or business in question interests me so little.

The COURT: Tell him his testimony is very unsatisfactory and he ought to know whether he went to a certain woman's house on a certain night, and he is an intelligent man and unless he was asleep or drunk he ought to know, and I want an answer from him on that point. He ought to know whether he was at that house with four other people that night when that contract was signed or not.

Ans. I like to state to Your Honor that I do not drink.

(By Mr. DEXTER:)

Q. Was he there or not? Answer that yes or no.

Ans. I do not remember.

The COURT: Say to him if he was a notary public or bank clerk and had to visit houses every night he might forget them.

Ans. Yes, but in that case, I would have the necessary documents and books to cause me to recollect my actions in the different matters.

Q. Were you there or not? You must remember that. Were you there or not at the house of Maria Rios that night? Yes or no? Answer that.

Ans. I remember the question perfectly well, but I want to refresh my memory.

Q. Don't you think you would remember if you went to the house with three or four other gentlemen and signed a document; don't you think you would remember it?

Ans. Of course.

Q. Now were you there or not?

Ans. I don't recollect.

(By the COURT:)

Q. Does he remember where his employer asked him to sign this paper?

Ans. I do not remember that either.

Q. Why don't he remember it?

Ans. That was a house engaged in a lot of business.

379 Q. Had he any business himself at Mrs. Rios' house? Was he asked by his employer to go out on a certain night to her house?

Ans. No, sir.

Witness retires.

Witness: EMILIO FAUR.

Direct examination.

(By Mr. DEXTER:)

Q. State your name, your age, residence and occupation?

Ans. Emilio Faur y Rios; residence Humacao; agriculturalist.

Q. How long have you been living in Humacao?

Ans. I went there some fourteen years ago.

Q. Do you know the lands that formerly belonged to the estate of Don José Maria Rios y Berrios?

Ans. Very little because I have been there seldom at Naguabo where they are situated.

Q. Are you or not able to testify as to the value of those lands in 1902?

Ans. I cannot testify because I am not very well acquainted with them, but I know they are worth a good deal.

Q. Do you think you are able to state as a practical agriculturalist the value of those lands per acre in 1902?

Ans. If I were acquainted with them, I would have no objection to testifying.

Q. But you are not acquainted with them perfectly well?

Ans. No, sir.

Q. Do you know Mr. Victor Burset?

Ans. Yes, sir.

Q. How long have you known him?

Ans. Ever since he arrived in the Island.

Q. When was that?

Ans. I don't remember when Mr. Victor arrived in the Island.

Q. Do you know what business he was engaged in in the Island?

Ans. I remember that he was at a time employed in the Registrar's office and on another occasion in the Alcade's office.

380 Q. Do you know whether in 1902 he was a man of means or wealth?

Ans. I don't know him as having been a property holder.

Q. Do you know whether or not in that year he was living on anything else except his salary as an employé?

Ans. I do not know that.

Mr. DEXTER: That is all.

No cross examination.

Witness retires.

Mr. DEXTER: Complainant now offers in evidence the deed from Don Emilio Cuadra as power of attorney of Santiago R. Palmer and wife, to Petronila Patricia Rios, wife of Francisco Noya, of a property consisting of 100 acres taken from the large property known as "Cercado Torres," dated November 21, 1902.

Complainant also offers the document or pledge made by Victor Burset on the 29th of December, 1903, to Messrs. Ochoa and Company, San Juan, Porto Rico, pledging jewelry.

The offer of the deed first mentioned is to show that Doña Petronila Rios, wife of Franciso Noya, received this property in consider-

ation of joining in the arrangement with the mother and these other parties defendant, and was therefore taken care of; and the other one is to show that at the time that Doña Manuela Gutman died or shortly before that she had pledged in the banking house of Ochoa & Co. her jewelry.

Mr. PETTINGILL: I have no objection to this deed, but I certainly have objections to the suggestions of Counsel because we have only had complainant's testimony so far. And this deed, so far from being any part of an arrangement, shows that the husband of Petronila paid his cold cash for it.

Mr. DEXTER: That is a matter of argument.

Mr. PETTINGILL: It is a matter of testimony. It is not a matter of argument.

Mr. DEXTER: Let the Court determine that.

The COURT: The deed is admitted.

(The deed is marked Exhibit "I" for the complainant.)

381 EXHIBIT "I" FOR THE COMPLAINANT.

Number Two Hundred and Thirty-Nine.

Purchase and Sale.

In the City of Humacao, chief town of the notarial district, on the 21st of November, 1902, before me, Antonio de Aldrey y Montolio, resident and notary of the same and of the Territorial College of the Island of Porto Rico, and witnesses hereinafter mentioned, there appeared:

First. Don Emilio Cuadra y Rosa, of age, married, land owner and resident of this city; and

Second. Doña Petronila Patricia Rios y Gutman, land owner, accompanied by her legitimate husband, Don Francisco Noya y Frias, a business man, both of age and of this vicinity, they appear in this instrument, the latter by her own right, and the former in representation of and as attorney in fact of Don Santiago R. Palmer é Yrizarri, married, notary public, of age, and resident of the city of San Juan Bautista, according to the power of attorney conferred on him according to deed No. 118, executed before the notary of said city, Don Herminio Diaz Navarro, under date of July 8th last, of which he exhibits me a copy which, at the request of the parties in interest, remains attached at the end of the present deed to be inserted in the copies which might be made of the same.

I, the Notary, certify to the acquaintance, profession and residence of the appearing parties, who assure me to be in the full enjoyment of their civil rights, nothing to the contrary appearing to me, and having, in my judgment, the necessary legal capacity to execute the present deed of purchase and sale, and the latter having previously requested and obtained from her husband the marital license, and which I certify has been requested, granted and accepted before me, they stated the following facts.

1. That Don Santiago R. Palmer, the grantor of the
382 power of attorney of the first party, is the owner in fee of the following rural estate: Parcel of land, without especial name, situated in the Barrio of Rio Abajo, within the jurisdiction of Naguabo, which formerly formed part of the property named "Cercado Torres," also known by the name of "Maizales," which was composed of two hundred and twenty three cuerdas, one hundred and forty thousandths of another, and from which it was taken to form a separate property, which separated parcel of land includes a superficial area of one hundred cuerdas of hilly and first class land, equivalent to thirty-nine hectareas, thirty areas, forty centiareas, and bounded on the north by the remaining part of the main property from which it was taken, On the East by Don Jesus L. Pereyó, formerly Don Estevan Garriga, on the south by the properties named Islote Quiñones, belonging to Don Santiago R. Palmer, from which it is separated by the river and moor lands of the succession Rios y Berrios, at present Doña Maria and Doña Petronila Rios, and on the west by the Rio Blanco, which separates it from lands of Don Arturo Gallardo and Don Ramón Villamil, and of the same main property.

2. That said property was acquired by Señor Palmer, the grantor of the power of attorney of the first party, in larger number of cuerdas, together with six properties more, by purchase from Don Victor Burset y Masferrer, by deed executed before the notary of San Juan, Don Herminio Diaz Navarro, on the 6th of July last, of which he affirms that no copy has been inscribed in the Registry of Property of this district, without they being able at this moment to specify the inscription.

3. That, as it appears from deed No. 130, executed before the notary of San Juan, Don Herminio Diaz Navarro, on the 23rd day of July last, of which he exhibits me a copy, which I certify I have before me at this time, and which they obligate
383 themselves to inscribe at the earliest possible time in the Registry of Property, upon the one hundred cuerdas of land in question there are no charges or incumbrances of any kind and they appeared separated in the fourth paragraph of said deed.

4th. That the parties in the capacity in which they appear have agreed upon the sale of the one hundred cuerdas of land above described for the sum and with the conditions hereinafter mentioned.

Wherefore, they carry into effect the agreement and execute the deed in the manner explained in the following clauses:

First. Don Emilio Cuadra y Rosa, as such attorney in fact, in the name and in representation of the seller, Don Santiago R. Palmer é Yrizarri, and acting in strict compliance with instructions received from his grantor, hereby transfers the ownership that he had to the one hundred cuerdas of land described in the first paragraph of this deed, in favor of the purchaser, Doña Petronila Patricia Rios y Gutman, and her successors, with all its appurtenances, interest, exits, uses, rights personal and to realty, and all that might correspond to him, without reservation whatsoever, so that she might possess it in fee and in the same manner that up

to the present time has been possessed by the seller, for the price and amount of four thousand dollars, American money, that Señor Cuadra as such attorney in fact of the seller, confesses to have received to his satisfaction and prior to this act. In virtue whereof, I, the Notary, inform him that having acknowledged the receipt of said sum, the property sold remains free from all responsibility by reason of the price, although it should be established afterwards that said delivery is not true in whole or in part.

Second. In compliance with the provisions of the Civil
384 Code in force since the 1st of July last, the said Don Emilio Cuadra, acting in his representative capacity, presents to me at this moment to be attached at the end of this deed, and to be inserted in the copies which might be made of the same, a copy of a deed executed under the number 40 before the notary of San Juan, Don Jacinto Texidor y Alcalá del Olmo, whereby Doña Catalina Romague ra Avila, legitimate wife of the seller, Don Santiago R. Palmer, grants to the latter her approval and consent to make the present sale.

Third. The parties declare, that the four thousand dollars, American money, price of this same, is the just and true value of the property sold, and that once this deed is inscribed in the Registry of Property, it shall not be annulled nor rescinded to the prejudice of third parties for any of the reasons mentioned in Article 28 of the Mortgage Law.

Fourth. The purchaser, without any further act but the execution of this deed, enters at once in the full enjoyment and exercise of all the rights that, to the property in question, corresponded to the seller, who remains obliged to guarantee the peaceful possession and quiet title.

Fifth. The said purchaser being informed of the present deed as stated, that she accepted the same in all its parts because the same conforms to the agreement, and both by mutual agreement designate this city for all the acts and proceedings which might arise from this contract.

I, the Notary, call the attention of the parties to the following:

1st. That I make express reservation in favor of the Government and of the Municipality of their legal mortgage, by virtue whereof they are preferred to any other creditor for the collection of the last annual taxes assessed and not paid by the property in question; and

385 2nd. The convenience to present this first copy of this deed in the Registry of Property of this district for its inscription, without which requirement it shall not prejudice third parties, nor shall it be admitted in the courts and tribunals, boards and offices of the Government, save in the form and cases described by the Mortgage Law.

Such is the new title of ownership that the parties execute so that it might be inscribed in favor of the purchaser by virtue of the present public instrument, to which fulfillment they obligate themselves in the most solemn form of law.

So it was stated, executed, and signed, together with the witnesses present, residents of age, and without legal disqualification

to act as such, who I certify to know, Don Federico Porrata Doria and Don Juan Rochi, after having read all and every one of them personally this deed in the exercise of their right of which I informed them, and to all of which I certify.

EMILIO CUADRA.
PETRONILA RIOS DE NOYA.
FRANCISCO NOYA.
JUAN ROCHI.
F. P. DORIA.
(Signed) ANTONIO DE ALDREY, *Notary.*

Compared copy. Number one hundred and eighteen. In the city of San Juan of Porto Rico, on the eighth day of July, 1902, before me, Herminio Diaz Navarro, lawyer and notary public, with residence and office open at No. 33 Allen Street, there appeared: Don Santiago R. Palmer é Yrizarri, of age, married, notary, and resident of this city, whom I know, and assuring me to have, and having, in my judgment, the necessary legal capacity for this act, he alleges: That he hereby appoints as his special attorney in fact, Don Emilio Cuadra y Rosa, of age, married, land-owner, and resident of Humacao, so that in accordance with the private instructions that in writing he gives the lawyer, Don José María Cuadra y Rosa, to execute a deed of sale of one hundred cuerdas of
386 land which shall be taken from a rural estate belonging to the grantor known by the name of "Cercado de Torres" and also by "Maizales," composed of two hundred and twenty-three cuerdas and one hundred and four thousandths of another, equivalent to eighty seven hectares, seven hundred and twelve areas of hilly and first class land, situated in the Barrio of Rio Abajo, within the jurisdiction of Naguabo, bounded on the north by lands of Don Jesus L. Pereyo, formerly Don Estevan Garriga, on the east by lands of the said Pereyó, formerly Garriga, on the south by the plantation named Islote Quiñones, from which it is separated by the river and also by lands of the Succession Rios y Berrios, by the River Blanco between, and on the west by the River Blanco, which separates it in part from lands of Don Arturo Gallardo and Don Ramón Villamil, and the rest is bounded by Don Marcelino Borges and Don Ramon Villamil, formerly Don Eladio Baldaña; acknowledging the said deed the receipt of the money for which the sale is made.

The grantor read this deed, which he accepts and ratifies in all its parts before the witnesses, Don Pedro de Elzaburu y Don Alberto Alvarez, of age, to me known and without legal disqualification, and all signed before me, the notary, and I certify to everything therein stated, and at the same time I mark and sign it.

SANTIAGO R. PALMER.
PEDRO DE ELZABURU.
ALBERTO ALVAREZ.
(Signed) HERMINIO DIAZ.

This first copy conforms with its original, which under No. 118 having affixed a revenue stamp of one dollar, is on file in my cur-

rent protocol of this notary under my charge, in witness whereof and at the request of the grantor, I issue the present copy, affixing thereto the corresponding revenue stamp of fifty cents, and taking note of its issuance and signing and marking it in San Juan, Porto Rico, on the same day, month and year of its execution.

(Signed) HERMINIO DIAZ,
Lawyer, Notary.

There is affixed a revenue stamp of fifty cents.

387 Compared copy. No. 40. In San Juan, Porto Rico, on the 13th day of October, 1902, before me, Jacinto Texitor y Alcalá del Olmo, lawyer and notary public, with residence in this capital, and practicing in all the courts of the Island, there appears Doña Catalina Romaguera Avila, of age, married, devoted to her domestic labors, accompanied by her legitimate husband, Don Santiago R. Palmer é Yrizarri, of age, lawyer, and notary public, both of this vicinity, I know the parties and assuring me to have, and having, in my judgment, the necessary legal capacity for the execution of this instrument, they allege:

First. That by public deed, executed in this capital, on the 8th day of July, 1902, before the notary, Don Herminio Diaz Navarro, Don Santiago R. Palmer é Yrizarri, conferred on Don Emilio Cuadra y Rosa, of age, married, land owner and resident of Humacao, special power, so that in accordance with the private instructions that in writing he gave to the lawyer, Don José Maria Cuadra y Rosa, he should execute a deed of sale of one hundred cuerdas of land to be taken from a rural estate belonging to the stating party, known by the name of "Cercado Torres" and which is specifically described in said deed of power of attorney hereinabove inserted. I mean referred to.

Second. That, it being necessary for the husband to have the authority and consent of his wife to sell or mortgage the property of the conjugal partnership, in accordance with the provisions of the Civil Code in force, the lady Doña Catalina Romaguera y Avila hereby ratifies in all the said deed of a special power conferred by her husband, Señor Palmer é Yrizarri on Don Emilio Cuadra y Rosa, and hereby gives her consent and approval so that the said sale may be carried into effect. Thus it is executed and
388 signed before the witnesses, Don Pedro de Elzaburu and Don José de Elzaburu, of age, of this vicinity, to me known, and without legal disqualifications, I read this document to all because they waive the right to read it for themselves, of which I informed them, it was ratified by the executing party with the consent of her husband, and all of them sign before me, the Notary, and I certify to all its contents, and at the same time sign and mark it.

CATALINA R. DE PALMER.
SANTIAGO R. PALMER.
PEDRO DE ELZABURU.
JOSÉ DE ELZABURU.

(Signed)
Lawyer JACINTO TEXIDOR Y ALCALÁ DEL OLMO.

This first copy corresponds to the original that under No. 40, having affixed thereto a revenue stamp of one dollar, *in* on file in the current proctocol of this notary under my charge, and in witness whereof, and at the request of the party executing it, I issue this copy in two sheets of paper of my own use, affixing thereto the corresponding revenue stamp of fifty cents and taking note of its issuance and signing and marking it in the city of San Juan, Porto Rico, on the same day, month and year of its execution.

(Signed)
JACINTO TEXIDOR Y ALCALÁ DEL OLMO.

There is a revenue stamp of fifty cents.

It corresponds well and faithfully with the original of its contents on file in the current general proctocol of the year 1902, to which I refer. In witness whereof, and at the request of the lawyer Don Juan F. Vias y Ochoteco, I issue present copy, which I sign, mark and rubricate in three sheets of notarial paper of my own use, affixing at the end a revenue stamp of fifty cents, according to the provisions of the Bill Hollander, and taking note of this issuance in Humacao, on the 6th day of April, 1905.

(Signed) ANTONIO DE ALDREY, *Notary.*

It is marked. There is a notarial seal of the notary and a
389 revenue stamp of fifty cents attached thereto.

(Signed) MARIO S. GEIGEL,
Int. U. S. Court.

390 The COURT: I presume the other is in line with the testimony given yesterday.

Mr. PETTINGILL: I object to that as entirely immaterial.

Counsel made an offer here that this was a document showing that Victor Burset pledged Manuela Gutman's jewelry.

Mr. DEXTER: No, I stated that he pledged a woman's jewelry.

The COURT: It may be his wife's jewelry. We will admit it in connection with the testimony. The paper is just as relevant as the witness' testimony.

Mr. Burset seems to have been the *factotum* of Doña Manuela.

Mr. PETTINGILL: Save an exception.

(The document is marked Exhibit "J" for the complainant.)

Mr. José Hernandez reads the two documents last offered, to the Court.

391 EXHIBIT "J" FOR THE COMPLAINANT.

Copy.

No. 296.

In the city of San Juan, Porto Rico, on the twenty-ninth day of December, nineteen hundred and three, before me, Don Juan de Guzman Benitez, Lawyer and Notary Public of this Island, with

residence at the Capital City of the same, there appeared

On one side, Don Victor Burset y Masferrer, married, landowner, of age and resident of this capital, and on the other side, the mercantile society domiciled in this place J. Ochoa y Hermano, and on its behalf the managing partner of the same, Don Severo Ochoa y Perez, married, merchant, of age and also resident of this city.

They assure me to have, and in my judgment they so have, the necessary legal capacity to execute this Deed of Proctocolization of Documents, Ratification, Amplification and Extension of Contract of Pledge, and they voluntarily state:

1. That under date of the third of August last, these parties appearing herein made a contract, by virtue whereof Don Victor Burset asknowledged himself to be indebted to the firm J. Ochoa y Hermano, in the sum of One Thousand Four Hundred Dollars, which he obligated himself to return on the third of December last, having for that purpose executed a promissory note, which original he delivers to me for its protocolization in this instrument, the firm of J. Ochoa y Hermano, which, literally copied, reads as follows.:

"For $1400.00. I owe and promise to pay to Messrs. J. Ochoa y Hermano, or their order, the sum of One Thousand Four Hundred Dollars U. S. which they have loaned to me without interest, and which I bind myself to return at their place of business, situated in this city, on the third day of December of the current year,
392 in the same money that has been delivered to me, and binding myself also to its faithful fulfillment, all the properties had and to be had, and renouncing hereby all the privileges that may be granted to me by law.

San Juan, P. R. August 3rd, 1903.

VICTOR BURSET."

This insertion corresponds with its original, to which I refer.

2. The debtor, Don Victor Burset, guarantees the return of said One Thousand Four Hundred Dollars by affecting, especially, and giving in pledge the jewels described in a document, which original is delivered to me by said Don Victor Burset, also for its protocolization, and which document literally copied reads as follows:

"We have received from Don Victor Burset Masferrer the following jewels in guarantee of the faithful fulfillment of a promissory note subscribed to by said gentleman on this day, amounting to One Thousand Four Hundred Dollars, which amount we have loaned to him, without interest:

1 pair ear rings, with diamonds.
1 brooch, with diamonds.
1 cross with seven diamonds.
1 brooch with 30 diamonds.
1 ring with one diamond.
1 bracelet, with diamonds and zap-hyres.
1 ring with several diamonds.
1 pin with diamonds.
1 ring with one diamond.

San Juan, Porto Rico, August 3rd, 1903.

J. OCHOA Y HERMANO.

This insertion also corresponds with its original, to which I certify.

3. The date of maturity having arrived, and the debtor not being in a position to pay the amount of the loan and reclaim the
393 pledged jewels, has obtained to attend to personal demands a further amount of sixty two dollars, loaned to him by the said creditor firm, the latter also consenting to an extension of said loan, amounting to-day to $1,462.00 with the guarantee of the said jewels, and for a period of three months longer.

4. And the parties having agreed to put in a public instrument what has been agreed between them, they hereby execute this deed with the following stipulations:

Ratification.

First. Don Victor Burset and the society J. Ochoa y Hermano, the latter through its managing partner, Don Severo Ochoa, ratified these stipulations of the documents which they mutually deliver to each other on the 3rd of August last, Don Victor Burset hereby declaring that the loan made to him is amplified to the sum of $62.00, the sum due being, therefore, a total of $1,462.00.

Time.

Second. The said loan is made for the time which may elapse up to the 3rd day of March of the coming year, 1904.

Pledge and Acceptance.

Third. The firm of J. Ochoa y Hermano declares to have in its possession the jewels described in document inserted in the second clause of this deed, in guarantee of the payment of the said $1,462.00, and accepts this deed in the terms in which it is drawn, offering to preserve with the care of good head of family the jewels deposited, without using them, and to be returned to Don Victor Burset on the day on which the amount of this loan is paid to them, and that it shall not bear any interest during the time of its duration.

Protocolization.

Fourth. I, the Notary, by virtue of the above statements
394 of the parties and alleged in paragraphs first and second of this deed, hereby make the protocolization of the two private documents above referred to, which I attach at the end of this instrument.

It is thus executed, there being present as witnesses, Don Guillermo Capetillo and Don Maximino Fernandez, of this vicinity, who have no legal disqualifications to so act. This deed having been read by me to the parties and witnesses, having previously advised them of their right to read personally, which they expressly renounced, they approved it, all of them signing it, and of its con-

tents as well as of the acquaintance, profession and residence of the parties, I, the notary, certify.

VICTOR BURSET.
J. OCHOA Y HERMANO.
GUILLERMO CAPETILLO.
MAXIMINO FERNANDEZ.
(Signed) JUAN DE GUZMAN BENITEZ.

An internal Revenue stamp.

"For $1,400.00. I owe and promise to pay to Messrs. J. Ochoa y Hermano or to their order, the sum of $1,400.00 U. S., which they have loaned to me without any interest, and which I obligate myself to return at their place of business, situated in this city, on the third day of December of the current year, in the same money in which it has been delivered to me, and binding also to its faithful fulfillment all the property had and to be had, and renouncing forthwith all the privileges which the law might concede to me.

San Juan, Porto Rico, August third, 1903.

VICTOR BURSET.

"We have received from Don Victor Burset Masferrer, the following jewels: in guarantee of the faithful fulfillment of a promissory note, subscribed to by said gentleman on this day, amounting to the sum of $1,400.00, which amount we have loaned to him without interest:

395 1 pair ear rings, with diamonds.
1 brooch, with diamonds.
1 cross, with seven diamonds.
1 pin, with 30 diamonds.
1 ring, with one diamond.
1 bracelet, with diamonds and zap-hyres.
1 ring, with several diamonds.
1 pin with diamonds.
1 ring, with one diamond.

San Juan, Porto Rico, August 3rd, 1903."

J. OCHOA Y HERMANO.

It corresponds with its original, under No. 296, exists in my protocol of Protocol of Public Documents, for the year 1903, to which I refer. And at the request of one of the interested parties, I issue the present copy, in 4 sheets of paper of my special use, taking note in the protocol of this issuance, and I sign, marked and rubricated at San Juan, Porto Rico, April 6th, 1905. Amended. Guarantee. Erased: Total. Valid.

(Signed) JUAN DE GUZMAN BENITEZ.

It is marked.

There is a Notarial Seal, and a revenue stamp of 50 cts.

(Signed) MARIO S. GEIGEL.
Interpreter U. S. Court.

396 , Witness: GEORGE MEREWETHER STRAYER.

Direct examination.

(By Mr. DEXTER:)

Q. Please give your name in full.
Ans. George Merewether Strayer.
Q. What is your present occupation?
Ans. I am assessor in the Treasury Department.
Q. In the Insular Treasury Department of Porto Rico?
Ans. Yes, sir.
Q. How long have you been living in Porto Rico?
Ans. Approximately four years.
Q. Have you been engaged in any other pursuit or avocation since you have been in Porto Rico, besides that of assessor?
Ans. I have been engaged in agriculture.
Q. As assessor of the Treasury Department of Porto Rico, have you had occasion to examine the lands of the succession of José Maria Rios in the jurisdictions of Naguabo and Humacao, the following properties: Do you know the property purchased by Messrs. Garzot & Fuertes in the jurisdiction of Naguabo, called "Cercado Ramirez," composed of 350 cuerdas, in the barrio of Rio Abajo?
Ans. I know of 350 acres that Garzot & Fuertes had, but I don't know the name.
Q. You know that property?
Ans. I know of a tract of 350 acres.
Q. This property to which I refer, Mr. Strayer, is bounded as follows: On the North by lands belonging to Mr. Juan Busó and others called "San Francisco," formerly belonging to Mr. Poncio Busó; on the East by lands of Don José Perez Villamil, separated by a ditch, which formerly belonged to Francisco Busó; on the South by the Rio Blanco which separates it from the estates of José del Carmen Borges and of Don Prudencio Bariola and the property known as "del lugar de los puentes"; and on the West by the Rio Blanco which separates it from the land called "Madam Duran." Do you recollect that property?
Ans. I went over the property that you refer to, with Mr. Fuertes.
Q. How long ago?
Ans. I cannot state the exact date, but about a month ago.
Q. What kind of land is that?
Ans. That is "vega" land.
Q. In English how would you express that?
Ans. River bottom land.
397 Q. Good or bad land?
Ans. That is good land.
Q. This land that you refer to has no improvements on it has it?
Ans. It has practically no improvements, one house.
Q. I ask you whether you can tell the value of the land in 1902, not taking into consideration any improvements.

MR. PETTINGILL: It is objected to unless the witness knew the land in 1902.

Q. From your best judgment, what was the value of those lands per acre in 1902?

Mr. PETTINGILL: I renew the objection.

The COURT: The objection is overruled.

Mr. PETTINGILL: Save an exception.

Ans. With the exception of 25 acres, the land was fully $100 per acre.

398 Q. Do you know the property composed of 150 cuerdas, having the name of "Islote" or "Islote Rivalta" situated in the barrio of Rio Abajo, jurisdiction of Naguabo, bounded on the North by a branch of the Rio Abajo known as Rio Viejo, which separates it from the lands of Mr. Juan Busó; on the East by the same Rio Viejo, which separates it from a lot known as the Ramirez lot belonging to Manuela Gutman, widow of Bustelo, as far as the junction of the mentioned branch with the Rio Blanco Moderno; on the South by the Rio Blanco Moderno, which separates it from other lands of Mr. Pilar Ojea; and on the West by lands belonging to Mr. Cristino Lebron and the succession of Don Ramon Argueso?

Ans. I cannot state that I know it by that description.

Q. Do you know the land I refer to by any description?

Ans. Yes, sir.

Q. Do you know what kind of land that is?

Ans. That is also vega land.

Q. What in your judgment was that worth in 1902?

(By the COURT:)

Q. Explain "vega."

Ans. Bottom land.

(By Mr. DEXTER:)

Q. What in your judgment was that worth in 1902?

Ans. $100 per acre.

Q. Do you know the property bearing the name or known by the name of the finca of "Madam Duran," composed of 107 acres in the same barrio of Rio Abajo, bounded on the North by the Rio Blanco which separates it from the "Cerca de Ramirez" belonging to Mrs. Manuela Gutman; on the East partly by the said Rio Blanco and partly by lands owned by Mr. Juan Buso; and on the West by lands owned by the Sucesion de Argueso, containing 107 acres?

Ans. No, I cannot say that I know it that way.

Q. If that were adjoining the properties above mentioned, the "Cercado Ramirez" and "Islote Rivalta" with which you are familiar and the value of which you testified to, would you be able to testify as to the value of the land?

Ans. Yes, sir.

The WITNESS: May I state the manner in which I looked at those small properties?

The COURT: Yes, sir.

Ans. They were pointed out to — by Mr. Fuertes and the boundaries were not given to me of those small properties. I had a certain

planilla for 915 acres and Mr. Fuertes did not tell me that certain properties joined it.

399 Q. This 915 acres is a total of all these different properties?

Ans. Yes, sir.

Q. You know the properties?

Ans. Yes, sir.

Q. They were pointed out to you?

Ans. Yes, sir.

Q. Was there a tract there of 107 acres?

Ans. I have not brought the assessments with me and I could not state positively that the tract is there of 107 acres. At the time that we made the note, of the property, we took certain amounts commencing with the 350 acres, then the 105 acres or something of that kind and kept on until we had completed the entire amount, but I do not carry in my memory each lot.

The COURT: Mr. Dexter, you would have to connect the identity of these 107 acres.

Mr. DEXTER: It is stated in the Bill that it is bounded by the "Cercado Ramirez" on the North and I say that adjoining the property concerning which he has just testified.

(By the COURT:)

Q. Do you know such a property?

Ans. Yes, sir.

Q. You can give your opinion on that.

Ans. My estimate of that is $100 per acre.

(By Mr. DEXTER:)

Q. Do you know the part of the property called "Los Puentes" situated in the same barrio of Rio Abajo, composed of 36 acres, bounded on the North by the same "Cercado Ramirez" and separated from it by the Rio Blanco?

Ans. It may have comprised the 915 and odd acres, but I could not state positively that I know that particular property.

Q. You know the whole 915 acres?

Ans. Yes, sir.

Q. You are familiar with that?

Ans. Yes, sir.

Q. Now that bounds the "Cercado Ramirez" on the South. Are you familiar with the character of that land?

Ans. I cannot say that I am.

Mr. DEXTER: I cannot say that I am.

400 Cross-examination.

(By Mr. PETTINGILL:)

Q. How long have you been connected with the Treasury Department?

Ans. More or less, six months; approximately six months.

Q. You say that previous to that you engaged in agriculture?

Ans. Yes, sir.

Q. Where?

Ans. In different parts of the Island. San Juan has been my headquarters.

Q. In what different parts and in what kinds of agriculture?

Ans. Planting oranges and vegetables.

Q. Previous to your connection with the Treasury Department, had your business carried you down to the Humacao District?

Ans. I have been down in the Humacao District.

Q. Had your business carried you down there?

Ans. Yes, sir.

Q. In what capacity?

Ans. On business.

Q. Did you go there to examine land?

Ans. It was on personal business.

Q. Did you go there to examine land?

Ans. Yes, sir.

Q. What kind of land; fruit land?

Ans. I said that I went there on my personal business in connection with my agricultural work.

Q. Your agricultural work at that time had nothing to do with sugar lands had it?

Ans. No, sir.

Q. You had no occasion to investigate sugar lands until you became connected with the Treasury Department, did you?

Ans. Yes, sir; frequently.

Q. In the Humacao District?

Ans. Not in the Humacao District.

Q. All this land that you have been speaking of was in the Humacao District as we speak of the Humacao District.

Ans. Yes, sir; in Humacao and Naguabo.

Q. Humacao is the Capital of that District?

Ans. But then the Humacao District is different from the Naguabo District.

Q. In the Treasury Department?

Ans. Yes, sir; and in my private business too I should call it different.

Q. What is the distance from Humacao to Naguabo?

Ans. I could not say.

Q. You have travelled it, haven't you?

Ans. Yes, sir.

Q. Well approximately how many miles or kilometers, whatever unit you have used?

401 Ans. I don't know the distance. I don't use the straight road, but always go through the trails to go to see whatever farm I have to look at.

Q. Didn't you go to your objective point first?

Ans. We went to Fajardo first.

Q. Haven't you some specific idea as to how far it is?

Ans. I should say it would take some three hours to go from Humacao to Naguabo.

Q. On horseback?

Ans. Yes, sir.

Q. And ordinary horseback riding is five miles an hour or six?

Ans. Yes, sir; something like that.

Q. You say you went over these properties with Mr. Fuertes a month ago?

Ans. Yes, sir.

Q. How did you happen to look at these properties with Don Fautino Fuertes on this occasion?

Ans. As assessor of the property.

Q. You were sent by the Treasury Department?

Ans. Sent by the Treasury Department.

Q. Who made up the list of 915 cuerdas that you said he had?

Ans. I could not state that.

Q. It was made in the Department?

Ans. Yes, sir.

Q. Have you been connected with the Department long enough to state whether an examination of lands for purposes of assessment is made each year?

Ans. I could not make that statement.

Q. Why can't you make it; because you don't know or because the rules of your Department prevent?

Ans. I could not give the rules of the Treasury Department.

Q. Why not?

Ans. I am not authorized to state.

Q. Do you know whether the Treasury Department in carrying out its work relating to the taxation of land, makes an examination each year of the values of lands returned for taxation?

Ans. May I explain to you the manner in which we work?

Q. I want an answer to this question first, then you can explain.

Ans. I cannot answer it.

Q. Why can't you answer it?

Ans. Because I cannot understand just the meaning of the question.

Q. Your work is all contained within a year?

Ans. Yes, sir.

402 Q. So I want to know whether you have knowledge as to whether a new assessment is made each year.

Ans. I have no personal knowledge of any changes being made each year.

Q. I asked you whether there was a re-examination each year.

Ans. Not having been in the Department a year, I could not state whether it is or not.

Q. Under the rules of the Department, is it not the duty of the assessors to make the assessment each year?

Ans. As I have not been there a year, I could not say. I simply have the planillas given to me.

Q. You state here that you don't know the rules of the Department?

Ans. No, sir; I don't state that.

Q. State whether under the rules of the Department, you or the

assessors charged with the work of assessing land, make a re-examination each year of the values.

Ans. No, sir.

Q. Was this examination made by you a month ago for the purpose of deciding whether the assessment on these particular properties should be increased or diminished or changed in any way?

403 Ans. The assessment was to be made of the true valuation of the property without regard to any former value that it might have had.

Q. Well, you say all properties are not re-valued. Why did you go to revalue these particular properties?

Ans. As one of the assessors of the Department, I performed the work that I was given to perform. The work was assigned me and I did it.

Q. Why were these properties singled out for re-valuation?

Ans. The planillas were given to me by the head of the Department.

Q. Who is the head of the Department?

Ans. Mr. Solomon is the head of the Department.

Q. Those planillas were the returns for the present year; you mean blank planillas or planillas that had been returned by the owners?

Ans. Blank planillas to fill in.

Q. Was this a special investigation or in pursuance of the ordinary method?

Ans. In pursuance of the ordinary method.

Q. Is not the ordinary method to deliver the planilla to the property owners for them to make their returns and then to investigate their correctness?

Ans. As I have not been in the Department a year, I cannot state the rules that have been used heretofore about conforming to the assessments made.

404 Q. During the time you have been there.

Ans. We have not finished up; have not made out the receipts for the year; we have not finished an assessment yet because it has not been approved.

Q. The returns have been made out?

Ans. It has not become an official assessment yet, because, as a matter of fact, it has to go before the board.

Q. Did you have with you or did you have knowledge when you went there of the return made and the valuation upon which taxes were assessed last year on these properties?

Ans. I could not state what the taxes were or whether an assessment was made of it last year.

Q. You had no knowledge of that at the time you went there?

Ans. I had knowledge of the amount of taxes that were paid the year before, but I could not state whether it had been re-assessed the year before.

Q. But you had knowledge of the valuation upon which taxes were paid the year before.

Ans. I do not remember; I have so many planillas.

Q. Did you make a return as a result of this examination?

Ans. Yes, sir.

Q. Did you make a return of $100 an acre?

Ans. I made an examination of the land, and if you will stop to think with the great number of planillas that I have to go over——

Q. Did you make your return in accordance with the valuation given here?

Ans. Yes, sir.

Q. Do you remember enough about the information you had at the time to say whether it was a large increase over the valuation of the previous year?

405 Ans. It was an increase on the former assessment.

Q. Can you give us an idea as to whether it was a large increase? Can't you tell us as a matter of fact what the assessment was?

Ans. I could not do it.

Q. Was it more than $50 an acre?

Ans. I could not tell you about that, because, as a matter of fact, I make a rule to turn the planillas over and ask them what the property is worth and try to get at a fair valuation as I did in this case of Mr. Fuertes, in other words, not to be governed by any previous assessment; sometimes they are more, sometimes they are less.

Q. I have understood you to testify that you are one of the assessors now.

Ans. Yes, sir.

Q. Have you a particular district of the Island assigned to you for your work?

Ans. Yes, I have headquarters here at San Juan, but, as a matter of fact, as I am a subordinate, I go where I am told.

Q. But your regular work is in the vicinity of San Juan.

Ans. My regular work extends to Vieques and takes in Humacao, Naguabo, Fajardo, Loiza and Rio Grande and all those towns in that neighborhood.

Q. And this work was within your regular district?

Ans. Yes, sir; the regular work.

Q. These 915 acres, was that all the property of Messrs. Garzot & Fuertes?

Ans. That was all the property that I had planillas for.

Q. Did it not include property of anybody else?

Ans. It included property that was declared under different names.

Q. Was it all declared in their firm name?

Ans. No, it was not in their name.

Witness retires.

406 Witness: ENRIQUE CERECEDO MILLAN.

Direct examination.

(By Mr. DEXTER:)

Q. Please state your name.

Ans. Enrique Cerecedo Millan.

Q. What is your residence?
Ans. 46 San Francisco St.
Q. San Juan?
Ans. Yes, sir.
Q. What is your occupation or business?
Ans. Merchant.
Q. How long have you lived in San Juan, Porto Rico?
Ans. 23 years.
Q. What firm are you a member of?
Ans. Today I am not a partner.
Q. Were you a member of the firm of Cerecedo Bros. in 1902?
Ans. Yes, sir.
Q. Do you recollect an assignment to that firm in 1902, on or about the 18th of October, of a mortgage executed by Messrs. Garzot & Fuertes upon a property in the district of Naguabo?
Ans. Yes, sir.
Q. Was that mortgage paid to your house?
Ans. Part of it was paid.
Q. Did Mr. Victor Burset have anything to do with that operation?
Ans. Yes, sir.
Q. Please state what that transaction was.
Ans. At the death of the widow of Bustelo.
Q. What was her name?
Ans. Mrs. Manuela Gutman, widow of Bustelo, she owed to the firm of Cerecedo Bros., of which I was a member, an amount of $230 or $250, I don't remember exactly the amount, for goods taken for her family. When the bill was presented to her for collection, Mr. Burset appeared stating that he did not have money to pay to.
Q. Do you know when that was, more or less?
Ans. The date I don't remember.
Q. What time was it with reference to the assignment of this mortgage in October, 1902; before or after, when Burset told you that?
Ans. It was afterwards.
Q. How long afterwards?
Ans. When he was required to pay the bill.
Q. Do you recollect about the time, more or less?
Ans. No, sir; I don't remember the date.
Q. Could you state the number of days or weeks; was it a question of days or weeks or months afterwards?
407 Ans. In order to say that I will have to go ahead with what I was stating before. Mr. Burset appeared and said that he did not have money to pay the bill, but that he had a credit outstanding, owing to him, by Garzot & Fuertes, of a year's time, and asked if I would take a mortgage on that credit of 1,000 pesos, paying the bill and giving him the balance in cash.
Q. Did he state at that time whom he was representing?
Ans. No, sir; he didn't say anything to me.
Q. What was done with reference to that Garzot & Fuertes mortgage?

Ans. About that time we purchased from Garzot & Fuertes some drafts on France and Mr. Garzot proposed to us in payment of that amount of francs, if we would not cede to him that credit, deducting the interest which Mr. Burset had discounted for that year, Garzot & Fuertes to pay half of the expenses so as to reduce our expenses.

Q. Was that debt of Manuela Gutman cancelled in that manner?

Ans. Yes, sir; the debt was paid and the balance was paid in cash to Mr. Burset.

Q. For what was that indebtedness incurred?

Ans. Goods taken by Mrs. Manuela Gutman.

Q. What kind of goods?

Ans. For provisions or things to eat; the debt was larger at the death of Mrs. Manuela, but Mr. Burset had paid some amounts on account.

Q. How long had that indebtedness been incurred prior to October, 1902, the date of the transfer of the mortgage?

Ans. As to that I cannot say anything accurately because Mrs. Manuela was in the habit of taking things or provisions from the store and she paid sometimes quite large sums in instalments. She did not make monthly payments, but paid on account every two or three months any amount, whatever she pleased, four to five hundred pesos.

Q. Who represented Mrs. Manuela Gutman in her business relations with your house prior to her death?

Ans. We dealt personally with her; she personally was the party who paid.

Q. Did Victor Burset, at the time he came there, tell you whom he represented?

Ans. No, sir; we have not spoken with reference to that. The only thing that he said that I remember was that Mrs. Manuela Gutman was indebted for certain amounts which he wanted to pay, for which he desired that the credit of 1,000 pesos should be taken for us to collect the amount due to us and have the balance paid back to him.

Q. This operation that you spoke about of the purchase of the draft on France, do you know what that was for?

408 Ans. Those drafts were for the firm of Cerecedo Hmos. & Co. for the payment of the expenses of the house.

Mr. DEXTER: That is all.

Cross-examination.

(By Mr. PETTINGILL:)

Q. In other words, it was to the convenience of the firm of Cerecedo Hermanos to have drafts on France with which they could remit to France.

Ans. No, sir; they were drafts which we always had, but in that particular case we had it on Garzot & Fuertes & Company and we thought it a convenience to accept it.

Q. But you don't understand my question. Weren't these drafts taken according to the ordinary course of business in order with them to pay for goods purchased in France?

Ans. Yes, sir.

Q. And that was an ordinary transaction?

Ans. Yes, sir.

Q. In order to save exchange?

Ans. Messrs. Garzot & Fuertes engaged in the cattle business and their sales are paid to them in drafts on Paris and they sell those drafts in the market.

Q. I understand that but the advantage to you in buying was it not to transfer to France to pay your debts?

Ans. Yes, sir.

Q. And those drafts were already bought by you before this transfer of the mortgage, as I understand it.

Ans. We used to buy drafts from him every week. They used to offer their drafts to different commercial houses and sell them to the firm who offered the best price.

Q. Then the purchasing of the drafts had nothing to do or no direct connection with the transfer of the mortgage.

Ans. No, sir; it was completely strange to the transaction. They always had funds in our house and when that credit was charged up to them by a deed executed before a notary, the amount was placed to the credit.

Q. Did your house consult with Garzot & Fuertes before taking this mortgage from Burset?

Ans. No, sir; because I agreed with Burset that before giving the money the deed had to come already recorded from Humacao. After the deed was duly registered it was that we proposed to Garzot & Fuertes if they wanted to accept that credit in settlement.

Q. Did Garzot & Fuertes to your knowledge have any knowledge of what Burset wanted with the money or what he did with it?

Ans. No, sir; I don't know.

Q. So far as you know, had they any knowledge?

409 Ans. The only thing I know is that they were owing part of the purchase price of the "finca."

Q. To whom?

Ans. I don't know that.

Q. As a result of this operation, however, which was made, Garzot & Fuertes paid your house $1,000?

Ans. Yes, sir; less the interest of the time allowed.

Q. Doña Manuela Gutman, you say, had a continuing account with your house?

Ans. Yes, sir.

Q. And that continued after she moved up here to San Juan?

Ans. Yes, sir; the account originated when she resided at Humacao.

Q. But that account continued after she came to San Juan?

Ans. Yes, sir; she continued purchasing from us after she came back here.

Mr. PETTINGILL: That is all.

Mr. DEXTER: Complainant will rest her case by offering a certificate of the Registrar of Property of an inscription made in the Reg-

istry of Humacao on the 27th of June, 1902, at the request of Victor Burset, one of the defendants.

Mr. PETTINGILL: We have no objection to this.

Mr. DEXTER: The purpose of this is to show that, although the property known as "San José de las Mulas" was by this agreement ceded to Maria Rios, it was not done at her request but at the request of Victor Burset to overcome the question of estoppel.

We have no translation of this ready.

(Interpreter translates same for the information of the Court.)

(The document is marked Exhibit K for the Complainant.)

Mr. DEXTER: Complainant rests.

Mr. PETTINGILL: Defendants make a motion that Your Honor, upon consideration of all the testimony, declare the same insufficient upon which to base a decree in her favor as against any of the defendants and that the decree now go in favor of all the defendants. (Citing in support thereof, 132 F. R., 483; and 143 U. S., 337.

The COURT: I overrule the motion.

Mr. PETTINGILL: Note an exception.

410 EXHIBIT "K" FOR THE COMPLAINANT.

* * * * * * *

[Seal of the Registrar of Property of Humacao, P. R.]

I, José R. Aponte, Fiscal of the District Court of this City, on account of the incapacity of the Registrar Don José Toro Rios, certify:

That at folio eighty-one in book thirteenth of the old registry on file in this office, there is found an inscription which literally copied is as follows:

For 11,640 pesos—Don José Maria Rios y Berrios, of this vicinity, by an instrument executed before me on this day confesses to owe the legitimate children of the Honorable Don Antonio Soler had in his matrimony with Doña Josefa Rios, on account of the purchase which he made of cattle, slaves certificates and lands adjudicated to him in the testamentary proceedings of said Don José Maria Rios, the sum of eleven thousand six hundred and forty pesos, to be paid in the following manner: Two thousand one hundred and forty one pesos and forty six cents on the twenty fifth instant; a like sum on the same day and month of each year of the next three following years, until 1878, as the value of the lands. The one thousand five hundred pesos corresponding to the cattle and horses, to be paid, seven hundred and fifty pesos on the same twenty fifth day of February of the current year, and the like sum on the same day and month of 1876, and fifteen hundred and seventy four pesos sixteen and two thirds cents, the price of the slaves certificates in equal parts during the four years referred to, and on the same dates named for the payment of the land, mortgaging for the security of the tracts of land so sold, which are situated, the first in the barrio of Rio Abajo, Municipality of Naguabo, and place called "Cercado Ramirez" composed of 78 cuerdas, and this tract and another

411 tract of swamps and woods in the same place, composed of nine and 350/1000ths cuerdas, being bounded by the river Naguabo, Doña Avelina Rios and Don Francisco Busó. Another tract composed of thirty seven and 500/1000ths of a cuerda, "Islote Rivalta" in the same barrio, bounded by the said river Naguabo, Doña Avelina Rios and the estate of Viader Busó. Another tract of 21.8357 cuerdas; and another of 5.312 cuerdas, estate "Madame Duran," in the same barrio, bounded by the said estate of Doña Avelina Rios, the river and Don Pedro Lebron.

8.7475 cuerdas low land farm called "las Puentes," situated in the barrio of "Boca Prieta," municipality of Naguabo, bounded by the river and Doña Avelina Rios.

43.3800 cuerdas and 12.4460 cuerdas in the farm called "Cercado Maldonado," barrio of Rio Abajo of Naguabo, bounded with the old river Rio Blanco, Suc-ession Richard, Don Eladio Saldaña and Doña Avelina Rios; 22.237 in the place called "Islote Quiñones" in the same barrio, bounded by Doña Avelina Rios, the Rio Viejo and a canal which joins it with the Rio Naguabo.

Humacao, February 12, 1875 (the word children interlined).

(Signed) EUGENIO DE TORRES, *Register.*

I certify, that at folio eighty two and over of the same book thirteen of Nabuabo, belonging to the old Registry of Mortgages, there is found the following inscription:

For 11,640 pesos—Don José Rios y Berrios, of this vicinity by an instrument executed before me to-day, on account of the purchase of land, live-stock and slaves certificates, that was made in the same instrument from his sister Doña Maria Rios de Pou, confesses to owing as the balance of the purchase price the sum of 11,640 pesos foreign money, which is to be paid in the following manner:

The value of the land, 2,141 pesos 46 cts. on the twenty
412 fifth instant, and an equal sum on the same day and month of each of the three years next following until the year 1878. Of the 1500 pesos the value of the live-stock, 700 pesos and 50 more in the same day the 25th instant, and the other 750 pesos in the some day and month of the year '76; and the 1574 pesos 16/2/3 cts., the value of the slave certificates, in the aforesaid four years in equal parts, and for *there* better security he expressly and especially mortgaged the lands so sold, which are as follows: A tract composed of 43.3890 cuerdas, and 12.4470 cuerdas, situated in the barrio of Rio Abajo, district of Naguabo, bounded by Doña and Doña Emilia Rios, Don Estevan Garriga, and Don Rodulfo Maldonado, which lands are called "Cercado de Torres. Another tract situated in the same barrio and place called "Islote Quiñones," with an area of 22.237 cuerdas bounded by Doña Emilia Rios and the Rio Naguabo; another tract situated in the same barrio and place, called "Islote Rivalta," composed of 30 and one-half cuerdas, bounded by the Rio Prieto, Doña Emilia Rios, the Rio Viejo and Doña Avelina Rios; Another tract in the same barrio and place, called "Cercado Ramirez," composed of 78.1034 cuerdas, bounded

by Don Francisco Busó, Doña Emilia Rios and Doña Avelina Rios. Another tract in the same barrio and place composed of 9.305 cuerdas, bounded by Doña Emilia Rios, the Rio Naguabo, Don Francisco Buso and Doña Avilina Rios; Another piece in the same barrio and place called "Madame Duran," composed of 21.8357 cuerdas, low land and 5.312 cuerdas uplands, bounded by Don Francisco Busó, Doña Emilia Rios, Don Pedro Lebron and Doña Avilina Rios. Another tract in the barrio of Boca Prieta, municipal district of Naguabo, and farm called "Las Puentes," bounded by Don Francisco Busó, Doña Emilia and Doña Avilina Rios.

Humacao, February 17, 1875.

(Signed) EUGENIO DE TORRES, *Registrar.*

I Certify: That at folio 84 of said book 13 of Naguabo
413 belonging to the old registry, is found the following inscription:

Don José Rios Berrios of this vicinity by a public instrument executed before me on this day, and on account of the purchase of land, live-stock and slave certificates, made in the same instrument from his sister Doña Emilia Rios de Fortuño, confesses to owe as a balance of the purchase price the sum of 11,540 pesos that is to be satisfied in the following manner: The price of the land, 2,141 pesos and 46 cts. on the 25th inst. and a like sum on the same day and month of each year of the next succeeding three years until 1878. The 1500 pesos the price of the live-stock, and 750 pesos more on the same 25th inst.; and the other 750 pesos on the same day and month of 1876; the 1504 pesos and 16-2/3 cts. the purchase price of the slaves certificates in equal parts during the four years aforesaid, mortgaging expressly and especially the lands so sold which are as follows:

A tract of land situated in the barrio of Rio Abajo, called "Cercado de Torres," composed of 43.3890 cuerdas of low land and 12.4470 cuerdas of upland, bounded by Don Esteban Garriga, Doña Amalia Rios and Don Eladio Saldaña. Another tract of land situated in the same barrio and place and called "Islote Quiñones" composed of 22.237 cuerdas bounded by Don Cecilio Rodriguez, Rio Viejo, Rio Pieto. Another tract situated in the aforesaid barrio and called "Islote Lebron" or "Rivalta" composed of 37-½ cuerdas, bounded by Doña Amalia Rios and Don Pedro Lebron. Another tract situated in the same barrio and — "Cercado Ramirez," composed of 78.6034 bounded by Don Juan Busó, Don Francisco Busó and Doña Amalia Rios. Another situated in the same barrio and place composed of 9.805 cuerdas, bounded by Don Francisco Busó and Doña Amalia Rios. Another situated in the same barrio and farm called "Madame Duran," composed of 21.8357 cuerdas
414 of low land and 5.312 cuerdas of upland, bounded by Don Francisco Busó Doña Amalia Rios and Don Pedro Lebron. Another situated in the barrio of Boca Prieta, the district of Naguabo and farm called "Las Puentes," composed of 8.7475 cuerdas,

bounded by the banks of the creek Anton Ruiz, Doña Amalia Rios and Don Francisco Busó.

Humacao, February 17, 1875.

(Signed) EUGENIO DE TORRES.

* * * * * * *

415 Mr. PETTINGILL: The second motion is that the Court now declare that there is no evidence connecting Garzot & Fuertes with whatever fraud may be *prima facie* held to be proven in the case, and that the testimony on behalf of the complainant herself affirmatively shows that they are purchasers in good faith and for valuable consideration and they are entitled to the protection of the Court as such, and that the decree now go that as to them the bill be dismissed. (Citing 15 How., 60; and 48 La. Annual Reps., 672.)

The COURT: I will reserve the decision on this question until Monday morning.

(Court adjourns *sine die*.)

416 MAY 11, 1905.

Mr. PETTINGILL: While the final decree of the Supreme Court in the appeal prosecuted by the complainant in this case has been attached to the record and was used in argument, I am inclined to think it has not been formally offered and therefore I now offer for the defendants the certified copy of the "sentencia" of the Supreme Court of Porto Rico, dated June 4, 1902, with its translation.

(The document is marked Exhibit 1 for the defendant.)

(Set out as part of plea of Garzot & Fuertes p. 60-67 *supra*.)

Mr. PETTINGILL: I also offer in evidence the testimony of the witness Patricio Algarin as taken upon commission, for the purpose of contradicting in certain respects the testimony that he gave here orally.

(The document is marked Exhibit 2 for the Defendants.)

417 EXHIBIT 2 FOR DEFENDANTS.

At the City of Humacao, on the sixteenth day of November, 1904, before me, Robert H. Todd, appointed commissioner by order of the Court under date of — of November, 1904, to take the testimony of the witness of the complainant, Mr. Patricio Algarin, for the reasons alleged in the petition presented by the Solicitors of said complainant, there being present Jose Hernandez Esq., and Don Juan F. Vias Ochoteco, and The Honorable N. B. K. Pettingill, Solicitor for the defendants, acting as stenographer herein Mr. Arturo Muñiz, appointed by the commissioner with the consent of the parties herein, who was duly sworn, and there being present the witness Mr. Patricio Algarin, who was also duly sworn, he testified as follows:

Examination by the COMPLAINANT:

Q. What is your name?

A. Patricio Algarin.

Q. What is your age?
A. 58 years more or less.
Q. What is your profession?
A. I have several; teacher, book-keeper and others. At present I am a teacher.
Q. How long have you lived in Humacao?
A. I was in San Juan seventeen years and afterwards came here in the year 61 to live with my family.
Q. How is your health?
A. The doctor visits me every day and I have a chronic grippe, a kind of pneumonia.
Q. How long have you been in bed?
A. About a month, since the 17th of October.
Q. What Doctor is attending you?
A. Doctor Font.
Q. Can't you get up?
A. No sir, I can hardly sit up.
Q. Do you know Mrs. Maria Rios?
418 A. Yes, sir, since ten years ago that I was her teacher.
Q. Do you know Mrs. Manuela Gutman?
A. Yes, sir.
Q. Do you know Mrs. Patronila Patricia Rios?
A. Yes, sir, she has been my pupil.
Q. How long have you known Mrs. Manuela?
A. For thirty years.
Q. And Mrs. Maria Rios?
A. For the same length of time.
Q. And Mrs. Petronila?
A. The same, I have known Mrs. Patricia since she was a little girl.
Q. What relation has existed between Mrs. Maria Rios and her mother Mrs. Manuela Gutman and her other sister Mrs. Petronila Patricia Rios?
A. Those of a son toward his father and those of a father toward his son.
Q. Where did Mrs. Maria Rios live*d* during the month of January, 1901?
A. In the same house where she lives now, belonging to Mr. Antonio Aguilar.
Q. Here, in Humacao?
A. Yes, sir.
Q. Were you in the habit of calling at the house of Mrs. Maria Rios at that time?
A. Yes, sir, sometimes; I was the teacher of her children.
Q. Do you remember having been there at the house of Mrs. Maria Rios on the 16th of January, 1901?
A. I remember that one evening of the month of January, I don't know the date, Mrs. Maria sent for me in order that I should make out for her the account of some cattle which she had sold.
Q. What happened that evening to Mrs. Maria Rios with reference to her property?
A. What I can say is that I was at her house one evening of Janu-

ary because she had sent for me to fix some accounts of cattle which she had sold; after a little while some gentlemen arrived and on seeing them she got up from where she was and went to receive them. By their voices I recognized those gentlemen to be
419 Mr. Francisco Noya, Mr. Manuel Argueso, Mr. Pipo Cuadra and another one who I was told afterwards was Mr. Lopez Landron. After they arrived Mr. Lopez Landron commenced by saying: Mrs. Maria, I come to bring you the happyness, the joy, in agreement with you- mother. This is a private (extra judicial) document; here is the signature of Mr. Francisco Noya, that of Mr. Pepin Rios and here is your lawyer. You may see that Mr. Francisco Noya and Mr. Pepin have signed. Let us fix all this. Then I heard Mrs. Maria ask him if the inheritance of her brother was reservable, and he answered yes. She then called the little girl and told her to bring the ink well, and when it was brought to her she signed. After a little while they withdrew well pleased. I found out afterwards that she had been deceived.

(Solicitor for the defendants moves to strike out the last part of this answer as heresay evidence.)

Q. Did Mr. Lopez Landron say that it was with the consent of the mother?

A. Yes, sir.

Q. Where were you?

A. I was at Mrs. Maria- house, in the dining room. I was waiting for her to finish in order to make out the account. After she finished I finished the account and went to my house.

Q. Do you know Mr. Manuel Argueso?

A. Yes, sir, he is a relative of mine.

Q. How long have you known him?

A. Since he was born.

Q. Do you know Mr. Jose Maria Cuadra?

A. Indeed I know him.

Q. How long ago?

A. A long time.

Q. How many years?

A. I cannot specify.

Q. Have you known him for twenty years?

A. And more.

Q. At what time did that which you have related happened?

A. It might have been seven in the evening.

420 Q. And all those gentlemen whom you have [illegible]tioned were there present?

A. Yes, sir; Mr. Pipo Cuadra, Mr. Manuel Argueso and Mr. Lopez Landron.

Q. Was Mrs. Maria Rios there?

A. Yes, sir, she went into the parlor to receive them.

Q. How many yards were they from the place where you were to the place where those gentlemen and Mrs. Maria Rios were?

A. About two or three yards, I was close to the place where they were.

Q. Were any other statements made there?

A. No, sir, no others were made.

Q. Nothing more than what you have said?

A. Nothing more. I know that Mrs. Maria sent for the ink well and signed.

Q. Why did she sign?

(Solicitor for the defendants objects to this question as it asks for the opinion of the witness.)

A. Because she was convinced by her lawyer Mr. Pipo Cuadra, and they told her that there was a composition or agreement to be made in order that she should enter upon the full enjoyment of her property. She asked if the inheritance from her brother was reservable, and they told her yes.

Q. And what was it that Mrs. Maria Rios signed?

A. An extra-judicial (private) document; but I cannot say that I saw it. I heard when they said so.

(Solicitor for the defendants requests that the first part of this answer be stricken out as it is heresay evidence.)

Q. Was the private document read to Mrs. Maria Rios?

(Solicitor for the defendants objects to this question as it would make it appear that that document was of the character which is mentioned in the question, when there is no testimony whatever in that direction.)

Q. That document which was signed by Mrs. Maria Rios, was read to her?

A. Yes, sir.

Q. Who read it?

A. Lawyer Lopez Landron. He arrived there and said: I come to bring you peace, I come to bring you happiness. She then inquired whether her brother's inheritance was reservable, and the lawyer answered her: "we have nothing to talk about that, that is our mission here."

421 Q. Did you hear that document read?

A. I did not fix my attention except when she signed. I heard the lawyer say that her sister and brother-in-law had signed.

Q. Do you remember more or less the contents of that document?

A. No, sir; I heard Mr. Lopez Landron say that if the agreement did not go into effect that it would be destroyed.

Q. Did Mr. Rafael Lopez Landron say that that document could be destroyed?

A. Yes, sir; and as he had told her that her sister and her brother-in-law had signed, she without knowing anything about it just signed.

Cross-examined by the SOLICITOR FOR THE DEFENDANTS:

Q. You said that Mrs. Maria and those gentlemen were in the parlor?

A. I was making out the accounts, and when those gentlemen arrived she went to receive them.

Q. And you were in the dining room?

A. Yes, sir; next to the parlor.

Q. Did you see all those gentlemen?

A. I did not see them; I recognized them by their voices, Mr. Francisco Noya, Mr. Manuel Argueso and Mr. Pipo Cuadra. I afterwards heard that Lopez Landron was also there.

Q. Did they see you?

A. No, sir.

Q. What was the object of Mrs. Maria calling you at her house that evening?

A. To make out the account of some cattle which she had sold.

Q. Was Mrs. Patricia there present?

A. No, sir.

Q. Nor Mrs. Manuela?

A. Neither.

Q. Was the husband of Mrs. Patricia there present for her?

A. Yes, sir, Mr. Francisco Noya.

Q. Were those gentlemen there when you arrived?

A. I was there making out an account when they arrived, and then Mrs. Maria Went out to receive them.

422 Q. Besides Mrs. Maria *were* there any other lady?

A. No, sir, she alone.

Q. How long did those gentlemen remain there?

A. About half hour, more or less.

Q. Was Mrs. Maria married at that time?

A. She was a widow, her husband had already died.

Q. During that conversation, could you see Mrs. Maria from the place where you were?

A. She was attending to the gentlemen, and I could not see her as I was in the ante-chamber.

Q. Before Mrs. Maria entered the parlor did she tell you to listen to the conversation?

A. No, sir.

(Solicitor for the complainant objects to this question as impertinent and irrelevant.)

Q. While that conversation was taking place in the parlor, what were you doing?

A. I was waiting for Mrs. Maria in order to finish the work which I was doing, as I could not continue without her.

Q. After the conversation did Mrs. Maria ask you if you had heard same?

A. No, sir.

Q. Then you were employed by Mrs. Maria not only as a teacher but also to attend to her affairs.

(Solicitor for the complainant objects to the question as impertinent and irrelevant.)

A. No, whenever she had any account to make out she would send for me.

Q. How long had you been in the house when those gentlemen arrived?

A. About half or a quarter of an hour.

Q. Who were those gentlemen?

A. Mr. Francisco Noya, Mr. Pipo Cuadra, Mr. Manuel Argueso and Mr. Lopez Landron. This last named I found out later by Mrs. Maria.

Q. Have you ever seen Mr. Lopez Landron?

A. I don't know him; I knew that he was there because Mrs. Maria mentioned it.

Q. Were there any other gentlemen?

A. No one else.

423 Q. Are you sure there were no others?

A. Mr. Pipo Cuadra, Mr. Landron, Mr. Francisco Noya and Mr. Argueso.

Q. Did you see when Mrs. Maria signed the document?

A. No, sir.

(Solicitor for the complainant objects to this question as the signature to the document is not a matter of dispute, it having been admitted by the defendants in their answer.)

Q. What had you been doing that day?

(Solicitor for the complainant objects to this question as impertinent and irrelevant.)

A. Working at my daily occupations.

Q. What day of the week was it?

A. I don't remember. It was a day in January 1901, about four years ago.

Q. How do you know it was in January?

A. Because I remember that it was in the month of January of 1901, but I cannot remember the date.

Q. How is it that you cannot remember that it was in February?

A. Because it was not in February, it was after the month of December had passed, after the feast of the three kings.

Q. Were you in the habit of calling often at Mrs. Maria Rios' house?

A. I was the teacher of the house, but many times I would not go to the house because she was at San Juan.

Q. Were you teaching the children of the house in those days?

A. Yes, sir.

Q. Were you regularly employed as teacher to the children of Mrs. Maria?

(Solicitor for the complainant objects to the question as impertinent and irrelevant.)

A. No, sir, at certain times, as she would go to San Juan and then would return.

Q. How many years have you been teaching both herself and her children?

(Solicitor for the complainant objects to the question as irrelevant.)

A. I have been her teacher over twenty years, at different times. At certain times and during that lapse of time I have been teacher to her children.

Q. Did you hear that anything was said in that conversation regarding the litigation that for many years had been going on in the family?

A. No, sir, the estate was undivided.

424 Q. Didn't you know that there was a continuous dispute between the mother and the daughters referring to the respective interest of each?

A. I know nothing, because that did not interest me any.

Q. What interest did you have in that special part of the conversation which you do remember?

(Solicitor for the complainant objects to the question as it presupposes that there exists any interest on the part of the witness when there has been no testimony to show that.)

A. None.

Q. Didn't you say a while ago that you could not remember the other part because you did not have any interest whatever?

A. I heard that conversation, but I had no interest in hearing it.

(Solicitor for the defendants requests that the stenographer be allowed to read to the witness that part of his testimony in answer to a question in which he said that he was not interested in the other part of the conversation. Solicitor for complainant agreed that it should be read, provided that it is as mentioned. The reporter read the said part.)

Q. What is it that makes you remember part of the conversation and don't make you remember the whole of the conversation?

(Solicitor for the complainant objects to the question as impertinent, irrelevant and so general that it does not specify the conversation.)

A. Because the conversation did not interest me; I merely testified to that which I heard.

Q. Did you hear any of the persons present mention the litigation which existed in the family for a long time?

A. Mr. Lopez Landron was the one who said: I am your saviour in agreement with your mother.

Q. Did you hear any other person say anything with the exception of Lopez Landron and Mrs. Maria?

A. I did not hear anyone else.

Re-examination by the SOLICITOR FOR THE COMPLAINANT:

Q. How do you know that Lopez Landron was there that evening?

A. Because he arrived with Messrs. Pipo Cuadra, Francisco Noya and Manuel Argueso.

Q. How do you know that he arrived with the other gentlemen?

A. Because when we were making out the account the lady heard that some one was knocking and she went to receive them

425 and left me alone.

Q. Did Mrs. Maria speak to him?

A. The same thing as I said before. She asked Mr. Lopez Landron if her brother's inheritance was reservable.

Q. Have you always had good friendship with Mrs. Petronila Rios?

A. I did have it, but some time ago.

Q. Have you always had good friendship with Mrs. Manuela Gutman?

A. Yes, sir.

Q. How long had you been the teacher of the daughters of Mrs. Maria Rios?

A. Since the hurricane known as San Ciriaco, at several intervals, as she would go to San Juan and would remain there some time.

Q. Then you are not a person employed by her regularly?

A. No, sir, because whenever she goes to San Juan I cannot do anything.

Q. Are you employed by her to-day in any form whatever?

A. No, sir, because her children are now at the American school.

Q. Are you in such a weak condition that you are unable to sign this testimony?

A. Yes, sir, I think I can, but badly.

Q. Do you think you can sign your name?

A. I may be able, but only scrolls would be the result.

Therefore, it was agreed by the parties through their solicitors, to waive the signature of the witness on account of his state of health.

426 *Testimony for the Defense.*

Witness: RAFAEL LOPEZ LANDRON.

Direct examination.

(By Mr. PETTINGILL:)

Q. What is your name?

Ans. Rafael Lopez Landron?

Q. How old are you?

Ans. Over 41 years of age.

Q. What is your profession?

Ans. A lawyer; property owner.

Q. How long have you practiced?

Ans. From 19 to 20 years.

Q. Where have you practiced during that time?

Ans. Before the Supreme Court of Porto Rico and before the different district courts of the island.

Q. Do you know the complainant Maria Rios?

Ans. Yes, sir.

Q. And her sister Doña Petronila?

Ans. Yes, sir; I know her too.

Q. And their mother Doña Manuela Gutman who is now dead?

Ans. Yes, sir; I did.

Q. How long have you known that family?

Ans. I have had occasion to know this family on account of having been called by Mrs. Manuela Gutman, to place me in charge of her affairs.

Q. What year was that when you were first placed in charge?

Ans. The first part of January, 1901; about that time I took charge of the affairs of Mrs. Manuela Gutman.

Q. What business did she have at that time which she placed in your charge.

427 Ans. When I was called to Humacao definitely to take charge of the affairs of Mrs. Gutman during the first 15 days of January, I had occasion to have several interviews with her, preliminary interviews, by virtue of which she acquainted me——

Q. What were the existing controversies between the mother and the two daughters at the time you were called in to take charge of the business of the mother?

Ans. I am going to explain it briefly. When I arrived at Humacao under instructions of Doña Manuela, after the first conferences that we had I asked for a bundle of legal proceedings, papers of litigations or disputes between the daughters and their mother on account of the inheritance of Don José Rios y Berrios, the first husband of Manuela Gutman. I felt sorry for the lamentable condition in which those litigations were because some twenty and odd years had elapsed and with law suits and law suits weighing heavily upon the estate, the best part and most select of the inheritance had disappeared; the good relationship among the family had disappeared and the way the mother and daughters were at the time following up the law suits they would have lost all they had and arrived at complete misery, in my humble opinion. So much is this so that after those long years it was necessary to arrange the testamentary proceedings all over again because the petitions that had been made therefor, if I am not mistaken, by Mr. Quiñones——

428 Q. Explain more directly the result of this mountain of papers.

Q. What were the controversies pending between these three parties?

Ans. The controversy consisted principally in the division of the estate or property left at the death of Don José Rios y Berrios between his heirs; that during such a long time they could not arrive at an agreement. When I arrived at Humacao, there existed a petition presented——

Q. Without referring specifically to one paper or another, tell us the result of those papers, the claims of each one.

Ans. The result that I myself obtained?

Q. Yes.

Ans. I observed or noticed on the one hand that the questions were all mixed up and that it was difficult to separate the interests in an amicable manner because Mrs. Maria as well as Petronila claimed reserved rights on properties left by José Rios y Gutman, the son by the first marriage. At the same time Mrs. Manuela al-

leged considerable rights against her daughters because she said that she brought to the marriage considerable amounts.

429 Q. From your investigation, how much did you conclude as her attorney that she was entitled to, and how much did you claim for her?

Ans. In the first place, the amount that she brought to the marriage.

Q. How much was that?

Ans. If I am not mistaken, 8,000 pesos; I could not give you the exact amount. The documents said so.

Q. What more did you claim for her?

Ans. I also claimed for her the usufruct of the property as the legitimate mother during the numberless years I think that these girls were under patrio potestas; a considerable amount. In addition to that, Doña Manuela Gutman managed the estate from and after the death of her husband for something like 20 years. She paid quite a number of debts with part of those properties of that estate and part of her own patrimony.

Several debts, as I have already stated, were paid; quite a large amount to Dr. Almodovar.

Q. Don Rafael, you are asked to state what your claim on behalf of Mrs. Manuela was. Not to state facts, but what the claim was that you made.

Ans. She thought she had a right to the collection of what she brought to the marriage.

(By the COURT:)

Q. It is not what she thought, but what he thought as her attorney.

Ans. That is what I said. I thought she was entitled to that. I also thought that she was entitled to a certain consideration for her management of the property for so many years.

The COURT: Ask him if that was liquidated at any amount.

(By Mr. PETTINGILL:)

Q. The claim as an administrator, was that fixed at any amount by him?

430 Ans. In order to bring to an end those different complications which were very complex and expensive and which would take considerable time of the courts——

Q. What did you first as her attorney claim that she was entitled to as administrator, in discussing the settlement?

Ans. I didn't make an exact calculation because that would bring into play a very voluminous amount of documents, but I calculated that she was entitled to the greater portion of the estate. So much so that if I don't remember incorrectly, a large portion of the estate was acquired during the marriage and they had the character of capital obtained during the marriage?

Mr. DEXTER: That is objected to. He has stated that as a fact.

The COURT: Yes; he has stated that as a fact. Tell the witness that he must avoid adjudicating any facts.

Ans. In the transaction and before the transaction, I, as an attorney, was of the opinion that we were entitled to claim first, the amount brought to the marriage; second, half of the property acquired during the marriage, the usufruct of the properties of the daughters Maria and Petronila.

Q. What about the administration?

Ans. With regard to the administration I was of the opinion that, according to the law, it belonged to Mrs. Manuela Gutman and that she was also entitled to a certain remuneration in compensation of the work and trouble that she had on account of that management, and for that reason I thought it was equitable to leave to the mother a larger portion than that belonging to each of the daughters. So much so that she had a son and she was also, notwithstanding everything else, the mother of those children. She had a son by the first marriage, José, who died; then afterwards, Maria and Petronila. She had two daughters and a son. In the second marriage with Bustelo I don't know how many children she had; I think five or six. There was a fact to be taken into consideration in favor of the widow.

Q. After you had consulted with your client and investigated these records, what did you do?

Ans. Advised her to avoid more trouble with the daughters by leaving aside all ill-feeling.

Q. Putting aside what you advised; what did you do with regard to the matter?

Ans. In view of the writing or petition of Mr. Cuadra, upon observing that that was an affair which never would come to an end and would amount to ruin of the family, I approached Mr. Cuadra.

431 Q. Who was Mr. Cuadra?

Ans. The attorney for Maria and Petronila.

Mr. DEXTER: I want that clear in what proceeding.

Q. In what proceeding did he represent Maria and Petronila?

Ans. The one that existed in the testamentary proceeding of José Rios y Berrios.

Q. Go on.

Ans. Cuadra showed some resistance; that was his spirit at the time, and I was preparing his mind to smooth certain inconveniences. I reported my impressions to Mrs. Manuela Gutman and I ratified to her my intention of bringing to an end in a private way, without any further judicial entanglements, as soon as it could possibly be by some equitable arrangement or settlement. As I conscientiously understood the difficulties of a settlement between mother and daughters, I did not give up my intention of continuing my conferences with Mr. Cuadra. This took place a few days before the 16th of January, 1901. I remember though that I was engaged for some seven days in discussing the basis for the transaction.

Q. With whom?

Ans. With Mr. José Maria Cuadra, sometimes in the presence of Francisco Noya, Mrs. Petronila's husband, and on several occasions

I thought of giving up my purpose of bringing the matter to a settlement because Cuadra opposed the most insignificant proposal that I made and used to go to the house of his clients to reply to me definitely. I argued to him that a lot of time was lost. Finally, after six or seven days, fortunately, in the warehouse of Mr. Argueso, although some of the conferences took place in the mirador of the house where I was living at the time, on the 16th, in the afternoon everything was agreed upon. I also remember,—and I want to tell this with as much assurance as possible,—that the compact arrived at between Mr. Cuadra and the party who has the honor to address you, we agreed to write out finally on clean paper the basis agreed upon, which bases were written in typewriting by one of the clerks of Mr. Argueso. After that work was done, Mr. Cuadra and Mr. Manuel Argueso and another witness, Almiroty, went to the house of Mrs. Petronila. It was then that I had the honor to know for the first time Mrs. Petronila, if I am not mistaken, and in the parlor we proceeded to read.

Q. Never mind the details of that. Did Petronila sign?

Ans. Yes, sir.

Q. What did you do next?

Ans. Her husband also signed. After that we went to Mrs. Manuela's house. It was natural that, in the same way that
432 I witnessed the signing of Mrs. Petronila, counsel for the other side should witness the signature of my client, and he came to Mrs. Manuela's house, and Mrs. Manuela was greatly pleased after brief explanation, and, after she became aware of the facts, signed, and, if I am not mistaken, she gave us some champagne. From that place we went over to the house of Mrs. Maria Rios.

Q. Now who went there?

Ans. Mr. Cuadra, myself, Mr. Manuel Argueso witness to the instrument, and I am almost certain that Mr. Almiroty, another of the witnesses, went there, but what I remember distinctly is that Mr. Argueso was there, who was the party who read the instrument.

Q. What hour was that?

Ans. At dusk; beginning of the night; after that the document was handed to Mrs. Maria?

Q. Do you know whether Doña Maria knew you were coming?

Ans. I suppose so.

Mr. DEXTER: This court is not a court of supposition.

Q. If you don't know, say so.

Ans. No, sir; I don't know.

Q. At what time of the day had those bases been finally determined upon, more or less?

Ans. If I am not mistaken, in the evening, about dusk. I could not give the exact hour for four years have elapsed.

Q. After the bases were determined upon and before they were written out or while they were being written out, do you know whether Mr. Cuadra saw his client, Mrs. Maria?

Ans. Yes, sir; he was frequently calling upon her.

Q. Where did he see her? Where was she?

Ans. At her house in the town, very near.

Mr. DEXTER: That is not an answer to the question.

Q. Please answer more specifically if after the final agreement was made, Mr. Cuadra visited his client Doña Maria.

Ans. Yes, sir.

(By the COURT:)

Q. How does he know that?

Ans. Because very frequently he left the premises to go and consult his client.

Mr. DEXTER: I object to that as incompetent.

The COURT: All he knows, from his own statement, is that he left to go and consult with her.

433 Q. In the evening, tell us all that you remember that happened at Doña Maria's house.

Ans. I do not remember all, but I remember that we went in and found the parlor empty. The party who let us in was Paco Noya, a brother-in-law of Doña Maria. We sat down and waited for Doña Maria to come in. It was then that I saw for the first time Doña Maria. I was introduced to her. I don't remember now who was the party who introduced me to her, and, after the usual phrases or forms, Mr. Argueso read the document aloud to her and slowly. The paper was then handed to Mrs. Maria. I remember perfectly well that Mrs. Maria, addressing me, asked me something about the 40 cuerdas adjudicated to the Bustelo brothers; 40 cuerdas, I think, situated within the heart of the "Las Mulas" plantation, and I remember telling her that that was a matter already consummated that it was not worth while to spoil a transaction of that kind for forty cuerdas which were not necessary and which were definitely recorded in the Registry of Property after the due formalities of law had been complied with. I expressed myself with these or similar words. If I am not mistaken, Mrs. Maria, before signing, asked me concerning the usufruct of Doña Manuela of the property of her daughters and I had the pleasure of telling her that in accordance with the transaction, that matter ought not to worry her either. My words were similar to these; that that was another matter which ought not to worry her in the least, because, according to the agreement made with Mr. Cuadra, I would do all in my power so that Mrs. Manuela would execute a deed renouncing absolutely all her usufruct rights in favor of her daughters by her first marriage, Mrs. Petronila and Mrs. Maria, so that no ground for disagreement absolutely should remain and that the property or rights should be balanced or divided up between them without any ground for litigation or lawsuits; without any disagreements or family troubles or lawsuits of any kind. My desire was to bring about a radical settlement and that the lawsuits of all kinds should forever come to an end. A few days afterwards, I could not say how many, but it might be a month or fifteen days——

Q. Before you get to that, do you remember anything else that occurred that night?

Ans. Nothing else but that the lady read the paper and after that, signed.

(By the COURT:)

Q. First he said that Argueso read it.

Ans. They both read it; first Argueso, and then she read it.

Q. Then she read it?

Ans. First Argueso read it and then it was handed to her and she just glanced over it and signed it immediately. That very night,—and this is a fact in detail that I happened to remember last
434 night, and that is, that being tired of remaining in Humacao such a long time and that I had other matters to attend to at San Juan, Mr. Cuadra and I agreed to write a petition signed in behalf of both lawyers, a petition which the parties themselves had to sign, notifying or advising the Humacao District Court of the transaction or settlement arrived at and notify the court——

Q. (Handing witness a document.) Never mind about the contents of the document. See if this is it.

(By the COURT:)

Q. How long was that afterwards; when did he and Mr. Cuadra agree to this?

Ans. The same night of the transaction; after the transaction, before I bid good-bye to come back to San Juan.

Q. The same night?

Ans. As I did not have time to stay, Mr. Cuadra and I agreed to write this paper.

(By Mr. PETTINGILL:)

Q. Is that your signature to this document?

Ans. Undoubtedly so.

The COURT: Is that the paper that she said she refused to join in?

Mr. PETTINGILL: I don't know.

Q. When did you sign it, Mr. Landron?

Ans. I signed it a good many days afterwards in San Juan.

Mr. PETTINGILL: It is not properly producible until I identify the signatures which I will have to do with another witness.

Q. Can you state whether that night as you and the other gentlemen entered the house of Doña Maria and you were introduced to her, you said to her: "I bring you joy, I bring you gladness because of the return of concord to your family" or words to that effect?

Ans. The exact words I cannot remember, but they were those usually put in cases of that kind, but what I meant to say was to convey by the first words that I said to her that I was not an enemy of hers; that I came to arrange an amicable settlement.

Q. When you came, who first opened the conversation with her, do you remember?

Ans. I could not tell you after four years.

Q. Was there any conversation between her and Don José Maria Cuadra there in the house?

Ans. Yes, sir; they did have a conversation there. He was precisely the leader of the party.

435 Q. Was there conversation touching this document which she was to sign?

Ans. Which document?

Q. The private document; the transaction.

Ans. Yes, some conversation took place. What I happen to remember now is the usufruct and the 40 cuerdas.

Q. That is the conversation that you had with Doña Maria. Was there any conversation between Doña Maria and Don José Maria Cuadra with respect to the transaction?

Ans. Yes, sir; Mr. Cuadra was the leader, the main member.

Q. But you don't remember any part of it?

Ans. After so many years I cannot remember the exact words that were exchanged between them.

Q. Besides you gentlemen that went there, did you see anybody else at the house besides Doña Maria?

Ans. I am trying to remember. Those present were José Maria Cuadra, Doña Maria who was at the house, Francisco Noya who was the first one to come into the house on account of being familiar, and Mr. Argueso and I — almost certain of having seen there Mr. Almiroty. As to the others I am absolutely certain and at present I don't remember having seen anybody else in the parlor.

Q. For what purpose did you gentlemen make that visit to Doña Maria's House that night?

Ans. I went there for the purpose of becoming positive of the certainty of the transaction and I was delicate enough to invite Mr. José Maria Cuadra, who came there I believe in company with Mr. Francisco Noya to the house of Mrs. Maria so that they would see that Mrs. Maria signed the paper freely and spontaneously.

Q. Did you ever have any conversation with Doña Maria subsequently as to this transaction?

Ans. I do not remember.

Q. Or ever receive any letter in regard to it?

Ans. With regard to the transaction?

Q. Yes.

Ans. I have a vague idea of having received a long time after a letter from her which I presented in court in connection with a lawsuit now amicably settled in connection with rural property. I think I remember, but the documents themselves will show that.

Q. Was it touching this transaction?

Ans. I think it referred to it because I asked her in a letter that, in view of the recording of the title having already been effected in her favor and in favor of Mrs. Petronila with regard to the plantation "Culo Prieto," the "Mulas" plantation and others——

The COURT: Tell him if he is telling the contents of one of his own letters, he had better not proceed.

436 Q. Do you have any knowledge of the existence of a mortgage over some of the property in controversy in this suit, given, I think, by Burset to Ygaravidez Landron?

Ans. The only knowledge I have is of having taken part in the letter of payment which I issued as attorney in fact of my brother, a brother of mine on my mother's side.

Q. A half brother then?

Ans. Yes, sir.

Q. State the circumstances.

Ans. In the month of July I think; I think it was in the second half of June, he sailed for the United States.

Q. Your brother?

Ans. Yes, sir; he went to Europe. Before sailing, he said to me——

Q. Never mind what he said. He gave you his power of attorney?

Ans. Yes, sir.

Q. Under that what did you do? You cannot state what he said.

Ans. I limited myself to comply with my duties.

Q. What did you do? Never mind why you did it?

Ans. Simply when I was called to receive the balance of the mortgage for $30,000 constituted by my brother, which amounted to $5,000, I went to give a receipt providing the money was delivered.

Q. Where was the money delivered?

Ans. It was delivered in the notary's office. First I think Mr. Garzot, the principal partner went there. The deed was already written out, executed. All I had to do was to give a receipt provided the balance was paid, and, in view of the fact that Mr. Garzot did not have the money with him, he gave me a check against Mendizabal & Company, and in view of the fact that I required that the money be then and there delivered, we went over to Mendizabal's house and got the money and came back to the notary's office and then the deed was signd. On the following day I sailed to the United States.

Q. So you received for your brother $5,000?

Ans. Yes, sir; and I also had to confess to having received the rest according to instruments received when I came back from the United States where I had my family.

Q. You stated the claims you made on behalf of Doña Manuela before the settlement. What were the claims made before the settlement by Cuadra for the two sisters?

Ans. At first Cuadra wanted,—afterwards he gave up the idea absolutely—to obtain in the first place the declaration that the property that Doña Maria had was reservable.

437 Q. (The witness is asked to repeat his last answer.)

Ans. He wanted to obtain in the first place the right to reserve the small portion that belonged to José Rios.

Q. To reserve for whom?

Ans. The dominion itself of the property.

Q. In other words, is not this the meaning of the word "reservable" that it should belong to the daughters subject to the life usufruct of the mother?

Ans. Yes, sir; that was the idea.

Q. That was the meaning of the word "reservable"?

Ans. Yes, sir; I said to Cuadra that that had no importance whatever as against the claims made by Doña Manuela; the amount brought by her to the marriage, the half of the amount of the marriage property; the debts paid by her and the natural usufruct that she had under the *patria potestas* over the property of her daugh-

ters, which rights represented an amount a great deal larger than what Mrs. Maria could make a claim for. That is the private transaction. That is what he claimed privately between the parties, but judicially before the courts he made claims to a lot of things.

Q. Tell us what he was making claim to before the courts.

Ans. Cuadra's petition, which was a very long one with a lot of clauses in it, in my opinion, has for its object nothing else but to bother Mrs. Manuela and attack her so as to take away from her the managing of the whole of the property, giving as a reason that she has not rendered any account or report for the products of the property which she had been managing, which products belonged to her, Mrs. Manuela, until the children became of age.

(By the COURT:)

Q. Did he in his investigation find out anything about that?

Ans. Yes, sir; I studied the records.

Q. Was that claim of hers well founded, in your opinion?

Ans. No, sir; it was not brought to court.

The COURT: The preliminary inquiry here is whether that paper is to be set aside and the negotiations leading up to it, and what was done in court don't appear to enter into it at all. The allegation is here that this man Cuadra has betrayed this woman and it is material that I understand whether these two girls got anything or whether she gave up all in the paper that led to the settlement. The controversy as presented to me says that she signed a paper in which she gave up very valuable interests, and Mr. Cuadra is ac-
438 cused of having betrayed her. Now I want to know, and this witness ought to be able to tell us, whether any claims that Cuadra presented for this woman were allowed, and what they were.

(By Mr. PETTINGILL:)

Q. State what Cuadra started out by claiming when you began negotiations?

Ans. He had a paper in which he made certain claims before the courts.

The COURT: What I am getting at is whether any concession was made.

Q. What concessions were made by you to Cuadra in order to induce him to recommend the making of the final transaction?

Mr. DEXTER: I understand Your Honor wants to know what concessions Cuadra made.

Q. (Was read by the Stenographer.)

Ans. The concessions I made to him were as follows: First, renunciation of all the usufrutuary rights of Doña Manuela over the properties of Mrs. Petronila and Mrs. Maria, a renunciation which I set forth in a public instrument before a notary signed by Mrs. Manuela after the transaction and in compliance with the terms of the transaction, a copy of which deed I delivered to the attorney of the other side for his satisfaction and guidance.

Q. What else was given?

Ans. Second, I offered to obtain the renunciation of all the rights

of Doña Manuela for administering or managing charges or expenses.

Q. Anything else?

Ans. Yes, sir; I offered to renounce, as they were indeed renounced in the transaction, all the rights claimed by Mrs. Manuela Gutman to the full title up to half of the property acquired during her marriage as "gananciales" or property obtained during the marriage. All that is explicitly stated or set forth in the transaction itself.

(By the COURT:)

Q. Any other concessions made?

Ans. Not to set forth any claim for the amount brought to the marriage.

Mr. PETTINGILL: I think he has given that already.

(By Mr. PETTINGILL:)

Q. In a word, explain what Cuadra gave up for the two daughters?

Ans. The reserved right, the one I referred to above. That is all, and he reserved a very insignificant portion of the estate.

439 Q. Anything else?

Ans. Nothing. What else could he give? That is all the concession that he made. The transaction was purposely made to bring to an end absolutely all the differences that existed or that might exist, both before the courts and privately, thus coming to a family conciliation and settlement of all family affairs and matters of interest.

Q. For the satisfaction of the Court and myself,—I presume the Counsel on the other side know all about it—what was the dispute as to the right in the inheritance of the property of the complainant's brother José Rios y Gutman?

Ans. Yes, sir; the son of the first marriage.

Q. What were the contested claims as to that?

Ans. At the death of José Rios y Berrios, the first husband of Manuela Gutman, the proper thing, according to law, was to make a distribution of the property left at his death, setting aside in the first place the payment of all the debts; after that, the property brought to the marriage by the wife; then the property brought to the marriage by the husband, and what was left was divided in two. That was our purpose or view. To the share belonging to José Rios y Gutman, were entitled simultaneously, on the one hand, Doña Manuela as usufructuary of the property left to those children. She didn't have to account for anything. She was entilted to manage the property and was entitled to do with the usufructuary whatever she pleased. That is the law. José Rios y Gutman was entitled to one-third because there were three children living out of the usufruct of the property that existed at that time, which was in time to be consolidated.

The COURT: I am anxious to know how that was disposed of.

Mr. PETTINGILL: There was no specific disposition of the inheri-

ance from the brother as distinguished from the inheritance of the father.

Mr. DEXTER: You will observe that the private contract scrupulously remains silent about those very facts.

WITNESS continuing: That was one-third of the property, excluding the usufruct belonging to Maria Rios as a daughter of José Rios y Berrios. That portion or share was insignificant as compared with the portion that was given to her after deducting the debts. This is the legal opinion that I had of the concession.

(By the COURT:)

Q. What was Cuadra's legal opinion on it?

(By Mr. PETTINGILL:)

Q. As to the right of his clients, the girls, from the brother's estate.

440 Ans. Cuadra said that Doña Maria and Doña Petronila were entitled to demand from Doña Manuela an account for the usufruct of the property ever since she started to manage them up to the death of the husband, a right to which I did not attach any importance because I defended always Doña Manuela as owner of all the usufruct.

I believe I forgot to say before as regards compensation for the transaction, one of the most important points, Mr. José Rios y Berrios, the father of Mrs. Maria and Mrs. Petronila——

(By the COURT:)

Q. What you are saying is the claim that you made for her, is it?

Ans. Yes, sir; one of the rights that I consider unquestionable to Mrs. Manuela and which Mrs. Manuela renounced by the transaction. The greater portion of the property acquired by Mr. José Rios y Berrios, father of these two girls, was acquired by purchase on the instalment plan from the inheritance left to his brothers and sisters. It was thus that his capital was considerably increased. In addition to that, Mr. José Rios y Berrios, as far as I remember, died very young without having hardly paid the first instalments. Perhaps he had paid two or three of the instalments due, and thus the greater portion of his patrimony remained subject to the payment of the price or instalments of that property. The widow, after taking charge of the property or estate, whether with her own capital or money or with the usufruct to which she was entitled in all of the property which her son or children had during the time that they were under her charge, or, rather under the *patria potestas,* up to becoming of age, was paid by Mrs. Manuela and I had a great deal of moral power to claim that right and endeavoring to make Mr. Cuadra understand that by pursuing the matter in a forcible manner by means of an endless chain of lawsuits, these girls would find that for them, the capital being judicially liquidated, a very insignificant part would remain.

Q. How much did you claim that was that she paid off, approximately?

Ans. The most of the instalments were paid by her.

Q. That is what we are talking about.

Ans. I could not tell you how much, but I would call the attention of the Honorable Judge to what is called capital free from indebtedness. The Honorable Judge will see that most of the capital was owing; that is, the greater portion of it was not paid.

Q. You have not answered the question. Can you give us approximately what these payments that Doña Manuela made, amounted to?

Ans. I think that the property inherited by the sisters, from whom Mr. José Rios y Berrios purchased, according to the deeds on record, each part represented that which Mr. José Rios y Berrios inherited. That is the same case of a co-heir to a plantation——

The COURT: What I am trying to condense is what she
441 paid on these instalments.

Mr. DEXTER: We object to his testimony on that point, unless he knows of his own knowledge.

The COURT: Yes; what did he claim for her?

Mr. PETTINGILL: What did he claim to Cuadra that he conceded, approximately?

Ans. Of the instalments due?

(By Mr. PETTINGILL:)

Q. Yes; how much she assumed of this debt and paid during the minority of the children; how much did he claim for that?

Ans. Around forty or fifty thousand dollars. It is a long time since that, but that is an approximate figure. Any errors that I make in my testimony will be corrected by the documents on filed or on exhibition.

Mr. PETTINGILL: That is all.

Cross-examination.

(By Mr. DEXTER:)

Q. You are the attorney for some of the defendants in this case, are you not?

Ans. I think that I am named in the record.

Q. I am not asking you whether you are named in the record. I am asking you whether you are one of the attorneys in this case.

Ans. Yes, sir; I answer that I am an official attorney; that I am on record and I elected to be a witness.

Q. I am aware of the fact that you are a witness and I am asking you if you are not an attorney for some of the parties in this case at the present time.

Ans. Yes, sir; I said so.

Q. Which of the parties?

Ans. At first I was attorney for Mr. Juan Garzot; Garzot & Fuertes; at first for Mr. Juan Garzot which was excluded.

Q. Are you not attorney for any of the other defendants?

Ans. No, sir.

Q. Neither for Victor Burset nor Palmer?

Ans. No, sir.

Q. Are you not the attorney for the Bustelos?

Ans. No, sir.

Mr. PETTINGILL: We object to that. They are not parties.

Q. Prior to the time that you went out to Humacao in January, 1901, and were retained by Doña Manuela Gutman as attorney, you knew nothing at all of these proceedings nor of the trans-
442 actions in connection with the estate of Don José Rios y Berrios?

Ans. By hearsay.

Q. Just by hearsay?

Ans. Just by hearsay; that is, up to that time.

Q. As I remember, this morning the witness testified to there being "bienes gananciales" or community property. Now I will ask the witness: Have you any personal knowledge that there were any "bienes gananciales" or community property?

Ans. By the papers, sir.

Q. What papers do you refer to?

Ans. The testamentary proceedings and the titles or deeds which were in possession of the widow.

Q. Now Mr. Landron, I submit to you as one of the leading Attorneys who was called in as Counsel by Doña Manuela Gutman, did you claim at the time you were retained and consulted by her, that she had an interest in the dominion or "nuda propiedad" of the estate left by her deceased husband José Maria Rios y Berrios?

Ans. I do not understand that question.

Q. (Was read by the Stenographer.)

Ans. I see two distinct points.

The COURT: Tell him to answer the question first, yes or no, and then explain. That is the rule.

443 Ans. A claim in the true sense of the word was not meant. When I arrived at Humacao a suit was instituted against us by Mr. Cuadra and my duty was to oppose those matters.

The COURT: Tell the witness he is an intelligent witness and is told to answer it yes or no.

Mr. PETTINGILL: He did explain. I ask that the answer be read to Your Honor.

The COURT: I know what the answer was.

Q. (Was read by the Stenographer and the witness was told to answer yes or no.)

Ans. Yes, sir; privately I made those claims and others besides to José Maria Cuadra before the suit was instituted.

(By Mr. DEXTER:)

Q. Mr. Landron, don't you know and did you not know at the time, as a lawyer, that in 1875, when Don José Maria Rios y Berrios died, that his widow could not acquire any more than one-fourth of the property in usufruct as a marriage portion?

Ans. No, sir.

Q. Do you know how much the "gananciales" were which were

claimed by Doña Manuela Gutman, or the profits of the community partnership?

Ans. I could not remember at this time.

Q. Is it not a fact that when the brother José Maria Rios y Gutman died, that the dominion title to his property passed to the sisters, leaving only the usufruct until the marriage or death to the mother?

Ans. I cannot understand that question.

Q. When the brother José Maria Rios y Gutman died, what did you claim as the devolution of his property? Who acquired the property and how; when he died, who acquired his property?

Ans. Mrs. Manuela, that is those properties passed over to Mrs. Manuela.

444 Q. Dominion title?

Ans. Not absolutely.

Q. How?

Ans. With a reservable right; that was some time ago.

Q. In favor of whom?

Ans. In favor of the sisters or daughters had by the first marriage.

Q. And Doña Manuela had the usufruct during her life or until her second marriage?

Ans. I think so.

Q. Is not that the same condition which existed with reference to the estate of the father; that the children had the reserved rights; that Doña Manuela remained with the usufruct and the children had the dominion title.

Ans. I will not undertake to understand the question until it is put all together.

Q. With reference to the estate or property, the "bienes," of the husband Don José Maria Rios y Berrios.

Ans. The husband of whom?

Q. Of Doña Manuela; when he died in 1875, did not the children, these two children, have his property in reserve, a reserved interest in his property, giving to the widow the usufruct or the use of this property only until her death or until her second marriage?

Ans. I do not understand the question and I am not going to answer the question until I understand it.

Q. Upon the death of Don José Maria y Berrios, did not all of his estate pass in the quality of "bienes reservables," or, as we say in English, the dominion, to the three children, leaving to the widow simply the use of the properties until her death or a subsequent marriage?

Ans. That is not so; of course not.

Q. Well, what was it then?

Ans. At the death of Mr. José Rios y Berrios, his property, those which he inherited from his parents and those which he purchased during his marriage from his brothers and sisters, all together, in addition to the capital brought to the marriage by Mrs. Manuela, remained in the hands and in possession of the widow Mrs. Manuela.

Q. After her second marriage did that still continue in her?

Ans. I think so.

Q. So that the children of the first marriage had no interest at all in the estate of their father?

Ans. That is the children of the first marriage or these two girls simply had during their mother's life and during her widowhood the property remaining and the usufruct of those properties had to pass over to the children of the first marriage at her death.

445 Q. So at the death of Doña Manuela they were entitled to both the title and the use?

Ans. To the property in remainded and the usufruct; that is so, but a very small portion was left after the liquidation was made and all the debts were paid, and after all the property brought to the marriage was deducted, and after the property brought to the marriage by the mother was deducted, that is what was left to the children.

Q. I was simply asking you about the "nuda propiedad." Would they not pass to the children at the death of Doña Manuela?

Ans. What children?

Q. The children by the first marriage.

Ans. Yes, sir; they were entitled to it, as I said before, to whatever portion was left after the liquidation was made.

Q. Was there a liquidation of the community property?

Ans. Yes, sir.

Q. When was that made?

Ans. It was never made, but for the same reason that the liquidation of the community property was never made. By reason of law it is understood to be a division in half between the husband and wife as long as the property was acquired by purchase, by exchange or in like manner.

Q. Wasn't the property "Islote Rivalta" acquired by José Maria Rios y Berrios during his lifetime?

Ans. I do not remember that.

Q. Didn't he acquire "Cercado Ramirez" in his lifetime?

Ans. I couldn't tell you that.

Q. Do you know the properties which are the object of this suit?

Ans. Yes, sir.

Q. You said that you made a claim in behalf of Doña Manuela as administratrix of the estate.

Ans. Yes, but privately to José Maria Cuadra, but we never went to the courts about it.

Q. Did you take into consideration that Doña Manuela had collected all the income of these plantations during the 20 and odd years of her administration?

Ans. I only took into consideration that she enjoyed the capital of all the estate legitimately, in my opinion, for several reasons. In the first place, as a widow, and I don't know if as executrix; and in the second place, on account of the portion brought by her to the marriage being mixed up in the estate. And in the third place, on account of her right to one-half of all the property purchased or exchanged during the marriage. And on account of having usu-

fructuary rights over all the properties subject to the *patria potestas.*

446 Q. Did you make calculation of the amounts which she was entitled to in the consultations with Cuadra?

Ans. I will tell the calculations which I made. I said to myself——

Q. I am not asking you that. What you said to Cuadra is what I want to know.

Ans. Of this considerable estate, there is only left some two thousand acres of land, more or less. That capital had some incumbrances or liens. In the first place, we had to deduct the payment of the debts incurred either by José Rios y Berrios——

The COURT: We were over all this before.

WITNESS continuing: which were of two natures: the first — them was the amounts owed of the purchases made of those properties.

The COURT: Mr. Dexter, we have been into that once or twice. Tell the witness not to repeat anything that he has said once.

Q. Now then, in this conversation with Cuadra, which led up to this agreement, he agreed to waive the "bienes reservables" or what we call the reserved rights, to Doña Maria and Doña Petronila.

Ans. He, as a matter of fact, did not renounce anything; simply gave up the reservable right and in exchange for that he acquired a larger portion of property for his clients than would really correspond to them after all debts had been liquidated and all deductions had been made.

Q. Will you tell what Maria Rios got out of that arrangement?

Ans. Half of the "Mulas" plantation.

Q. Wasn't she entitled to that anyway?

Ans. No, sir; she would not be entitled to so much.

Q. How much would she be entitled to after the death of her brother?

Mr. PETTINGILL: We have been all over this. This witness has explained that before it could be told there would have to be a liquidation and account of all the debts and money paid. No witness can testify just what they were entitled to because it was subject to a liquidation.

The COURT: I think, Mr. Dexter, we cannot try this case on this line of questioning at all. This woman appeared on the stand and made certain charges as to this private agreement, that a misrepresentation had been made to her.

447 Q. This settlement contained in this private agreement of January 16, 1901, was it the result of attention and consideration which you had given to this matter? You had developed the idea, had you not?

Ans. The idea was developed between Mr. Cuadra and myself. There were associated or combined ideas.

Q. And you had some difficulty in getting him around to accept your ideas, did you?

Ans. Yes, sir; I had a long discussion with him which lasted six or seven days.

(By the COURT:)

Q. What occupied the seven days?

Ans. In the first place we had to go over and discuss a petition made by Mr. Cuadra, which had something like 11 clauses, a document to which I had to reply within a given period. I tried to persuade him that it would be unreasonable and insensible to go on in the way he wanted. That would mean a continuation of the lawsuits and entanglements had for twenty years past, and that that had to come to an end.

Q. You stated all that? In your conferences with Cuadra, that was the principal thing that he set forth, was it not; these reserved rights?

Ans. That was one of the points which *eh* questioned. I don't know whether it was the one to which he attached the most importance or not; his desire was to continue the lawsuits.

Q. You finally induced him to withdraw that point about the reserved rights?

Ans. I didn't induce anybody to do anything. I gave my reasons, some of which were accepted and others were not, and I had to give way to some things that I demanded and also grant some of those which were asked by him.

Q. And he accepted your suggestions as to the reserved rights?

Ans. He made that concession with the consent, as he stated to me, of Doña Maria Rios, but in exchange for that I agreed to renounce all the other rights of Mrs. Manuela which I have repeatedly enumerated this morning and this afternoon.

Q. You don't know whether he actually talked with Doña Maria or not, do you, during these conferences?

Ans. I know of my own knowledge that he used to go there very frequently, something like one to three times a day.

448 Q. Did you see him in the house?

Ans. I know that he went there because he said to me: I am going to consult with my client.

The COURT: What he said is not competent here.

Mr. PETTINGILL: I am not so sure of that, Your Honor. He was acting as the agent.

Mr. DEXTER: I don't know how Counsel can say that he was our agent when he betrayed the trust.

Q. Where were these conferences held, Mr. Landron, and how long before the paper was signed?

Ans. The first ones were held at the house of the parish priest, my intimate friend, whose guest I was during the time I was at Humacao.

Q. What is his name?

Ans. Leoncio.

Q. Leoncio Garcia?

Ans. Yes, sir; he is a lawyer too.

Q. How many conferences took place in his house and when?

Ans. After four years I could not tell because I did not take the trouble to count them.

(By the COURT:)

Q. Who were the conferences held with at the priest's house?

Ans. As a rule, they were conferences which did not concern anybody except the two interested parties and Francisco Noya; the attorneys Cuadra and myself, and Francisco Noya who was sometimes present.

(By Mr. DEXTER:)

Q. Father Leoncio Garcia was not present?

Ans. I don't remember if he was on one occasion present or not or if he could hear something because sometimes we held the conferences in the parlor in which he was present, but inasmuch as he was not a party to these affairs, we did not think it proper to invite him to them.

Q. Can't you answer these questions without so much circumlocution? Couldn't you say that he was not present?

Ans. Father Leoncio?

Q. Yes. Was he present?

Ans. He may have heard something or passed by the parlor where we were.

Q. Were you stopping at his house?

Ans. Yes, sir; as his guest; yes, sir. I slept there and dined with him.

Q. Where else were these conferences held?

Ans. Sometimes in the mirador.

449 Q. That was in the same house was it not? I am asking you now about any other house or place.

Ans. In the warehouse or offices of Manuel Argueso. That is the place where we had the final discussion.

Q. Argueso was a client of yours at the time?

Ans. I believe so.

Q. Now how long before this document of January 16, 1901, was it that these conferences were taking place?

Ans. I said already this morning that I spent a week in Humacao and had several conferences and discussions and treated the subject over and over again with Mr. Cuadra.

(By the COURT:)

Q. He is not answering the question. How long was it before the paper was signed?

Ans. Seven days successively because those conferences took place the first time I was called there by Mrs. Manuela to Humacao.

Q. Does he mean to say that on the seventh day the negotiations were closed and the paper signed?

Ans. Yes, sir.

(By Mr. DEXTER:)

Q. When Cuadra finally consented to enter into that agreement with Doña Maria, you were very much gratified, were you not?

Ans. No, sir; I felt like everybody else would feel under the same circumstances. I felt satisfied because I succeeded in securing

charitable work in bringing about the end of a family quarrel, or rather the peace of the family.

Q. Was the happy termination of that charitable event the occasion for the sipping of champagne that afternoon?

Ans. It was not celebrated exactly.

Q. You thought that was a pretty good settlement, didn't you, Mr. Landron?

Ans. An equitable arrangement, although it rather prejudiced Mrs. Manuela because she granted to her daughters more than she got from them.

Q. I suppose then you didn't charge anything for your services in the matter, did you?

Ans. I always charge.

Q. Did this mortgage given in favor of your brother have anything to do with your fees?

Ans. No, sir.

Q. You didn't get any portion of that at all?

Ans. What I received was the remaining $5,000 as per bill rendered.

Q. Do you know whether your brother loaned $30,000 to Burset or Palmer when he got that mortgage?

450 Ans. I was absent, if I am not mistaken, in the United States, where I had my family. During my absence, as in all cases when he is here, he used to be in charge of my affairs, and all I know concerning that mortgage is, as far as I remember, that when I came back in July, 1901, to the Island, the mortgage was constituted. I did not take part in the execution of the mortgage.

The COURT: What is the object of this testimony?

Mr. DEXTER: I am endeavoring to show that this brother was simply a figure-head for this witness here.

Q. Was this mortgage made to your brother for you or for his own benefit?

Ans. Not for my benefit; it was made in his favor. I said before that I did not participate in the execution of that mortgage because I was not present.

Q. You say you were absent in the States in July, 1901?

Ans. If I am not mistaken. What is the date of the deed.

Q. Where were you in July, 1902?

Ans. I will tell you if you will allow me to bring out a memorandum. (Referring to notes) I sailed on May 21, 1902, for the United States with all my family and I left them in Philadelphia and I came back to Porto Rico on July 2, 1902. And when I came back to Porto Rico, I remained in Porto Rico until August 27, 1902, when I again sailed for the United States.

Q. This mortgage was made to your brother by Victor Burset July 1, 1902, the day before you arrived here, according to your statement.

Ans. Yes, sir; I arrived here on the 2nd.

Q. You say you had no interest in that mortgage at all?

Ans. Legally I had no interest in it for the reason that that mortgage was made by my brother during my absence.

Q. Was not the mortgage made by Burset to him?

Ans. I don't remember whether it was Burset or who. My functions were limited to collecting the $5,000 which represented the amount due.

Q. What was the occupation of your brother in July, 1902, your brother Ygaravidez Landron?

Ans. When he was here he was in charge of all my affairs; he was managing all my affairs.

Q. An employé of your office?

Ans. No, sir; he sometimes assisted me in some court matters.

Q. Is that all?

Ans. And he had his own capital. He lives in Europe.

451 Q. In July, 1902, was he a wealthy man?

Ans. At that time he must have had considerable money, in addition to his own money, my own. I recollect now that in the month of April or March of that same year I carried through a negotiation with Mr. Geo. Finlay, whereby I sold to him lands for $22,000, which money was managed by my brother.

The COURT: Tell him that Mr. Dexter seriously objects to the length of his declarations.

Q. What property did your brother have in July, 1902?

Ans. I think that by that time, land at Santurce Park on the Santurce road, amounting to 12½ acres, and a house which was already in course of construction.

Q. Was that property your brother's or yours?

Ans. He purchased that land in my behalf as my agent.

Q. He paid for it with your money?

Ans. He used my money as his own entirely.

Mr. DEXTER: That is all on that point.

Q. You were asked this morning, Mr. Landron, I think by the Court, what Cuadra claimed for Doña Maria and Doña Petronila in these conferences and you were also asked what he claimed with reference to the estate left by both the father and the brother; what interest the two daughters were entitled to, and you didn't answer that. What is your answer?

Q. (Was read by the Stenographer.)

Ans. The question is too long. If you will ask it by sections, I can perhaps answer it.

Q. You are not surprsied at having long questions asked in court, are you, Mr. Landron? Don't you think you know what that question means?

Ans. I ask to have the questions shorter.

Q. You were asked this morning, Mr. Landron, I think by the Court, what Cuadra claimed for Doña Maria and Doña Petronila in these conferences.

Ans. In the first place, he wanted me to support the petition that

he had made to the District Court of Humacao, and among them I remember first the rendering of an account.

Q. By whom?

452 Ans. By Mrs. Manuela for account of the property left of the estate; he also asked in that petition that Mrs. Manuela cease to be an administrator or manager of those properties and he also asked,—I don't remember whether it was in that same petition or not—that the property which was left to them by inheritance from Mr. José Rios y Berrios, which may belong to the daughters had by the first marriage, in so far as it refers to the sisters had by the first marriage, it should be considered always as reservable, a character given up in the transaction.

Q. The agreement which was finally arrived at and signed on the 16th of January, 1901, renounced all those claims?

Ans. Yes, sir; all of those claims, both judicial and extra-judicial; claims now made and that may be made hereafter.

Q. Made an express renunciation of all those claims?

Ans. Yes, impliedly all kinds of claims were renounced by means of that document.

(By the COURT:)

Q. Is it customary in this country of Porto Rico where lawyers are engaged in a long consultation and drawing up papers for signatures, that the lawyer of the opposing side goes with the adverse client and his attorney to see that the paper is signed?

Ans. At least that has been my custom to witness the signature myself and to invite the Counsel of the other side to witness the signature of my parties.

Q. Is it customary for the profession here to go to the house of a party unannounced and make an explanation such as he has made here as to the contents of that paper? Ask him: Couldn't he trust Mr. Cuadra to make an explanation to his own client and get her signature?

Ans. I would have trusted Mr. Cuadra undoubtedly.

Q. Were there any reasons why he mistrusted Cuadra?

Ans. It seemed natural to me that all the Attorneys should go around and get the signatures because the parties lived in different places.

Q. Wasn't Mr. Cuadra a reputable lawyer representing this party and wouldn't he trust him to get her signature and bring it to him?

Ans. It wasn't due to lack of confidence in him.

Q. Let us see if there was any reciprocity. Did Cuadra go to his client to see if his client signed it?

Ans. Yes, sir.

Q. That is customary?

Ans. Some of the lawyers have that custom. I did so, so that afterwards there should not be any evasions.

Q. He says he went there and made explanations. Tell him that this woman testified here *here* that he told her that her rights were in no way prejudiced.

453 Ans. I don't remember that, but what I remember is what I said this morning, that she argued to me as to the forty acres of the "Mulas" estate.

Q. That was the only question she discussed?

Ans. She didn't discuss any point; she simply inquired about the 40 acres of the "Mulas" estate, and also in regard to the right of usufruct.

Q. Did she inquire of you?

Ans. If Doña Manuela was to continue to have the usufructory right to the property belonging to her.

Q. She also stated that it was represented to her that the paper was a merely temporary paper, to be ratified by a judicial paper afterwards.

Ans. That is not exactly so. The fact of the case is this: First a private document which was afterwards to be converted into a notarial document.

Q. That is exactly what she says. Does he know that when the new public paper was drawn up, she refused to sign? Did he draw that up?

Ans. I know so by heasay from Mr. Cuadra.

Q. Wasn't it submitted to you?

Ans. I do not remember. I didn't have to sign that document.

Q. Don't this very paper that she signed call for a public document?

Ans. Yes, in the private document she agreed to convert it into a public official paper.

Q. Why wouldn't he be interested, as a representative of the mother, to have that paper submitted to him?

Ans. I believe that Mrs. Maria refused.

Q. I am not asking him that. I am asking him, in drawing up the new public document, if he was not consulted because his client was a party to it?

Ans. I left that matter in charge of Mr. Cuadra.

Q. Then Mr. Cuadra must have been attorney for your client, the widow.

Ans. No, sir.

Q. If he left the matter of preparing this public document to Cuadra, wouldn't that make Cuadra attorney for his client?

Ans. He was by virtue of that fact converted into the executor of the transaction, that is the party in charge of carrying out the execution agreed upon.

Q. She says that she discovered when that new paper was sent to her quite a material change from the paper she had signed in private, and therefore she refused to sign it. He says he knew she refused to sign. Now, what was the reason given; does he know?

Ans. Yes, by reasons given me by Mr. Cuadra.

454 Q. What was the reason she refused to sign it; does he know?

Ans. Not directly.

Q. Whether he knew it directly or not, Mr. Cuadra told him?

Ans. Mr. Cuadra said to me that she had refused.

Q. We know that. He has said so once or twice. Did he say on what grounds she refused?

Ans. No, sir.

Q. And he never inquired? Does he want us to understand that?

Ans. I could not tell you whether I did or did not endeavor to find out.

Q. Put this question to him as a practicing lawyer going to a place to have a paper signed as this was; if he didn't conceive it to be his duty, when he heard that she refused to sign the paper, to go again and explain the matter to her fully; did he think he owed no duty of that kind? Ask him if he thought he owed no professional duty of that kind. After he had explained this document and got her to sign it, ask him if he thinks he was fulfilling his professional duty in not going to her and explaining it to her.

Ans. I thought rather that that concerned more her attorney.

Q. Ask him whether that was not a family settlement that they were rejoicing over and ask him if he didn't think that his duty required him to explain it if she refused to sign it, the settlement being amicable; that the settlement being an amicable settlement, didn't a different duty prevail than if they were fighting at law?

Ans. That was a duty which pertained principally to my fellow attorney or lawyer, Mr. Cuadra.

Q. He thought he owed no duty at all in the matter?

Ans. Yes, sir; I did not.

Q. And that is the reason he took no interest in it?

Ans. Yes, sir.

(By Mr. DEXTER:)

Q. Then when you left Humacao after this contract was signed in the house of Doña Maria that night, you left everything to Cuadra?

Ans. Yes, but I interfered or took part or participated in the affairs every time I went to Humacao.

Q. But in your absence he looked after your interests?

Ans. Yes, sir; he attended to the fulfillment of the transaction because we had stipulated in one of the clauses of the private agreement that the two attorneys by themselves were to carry out the transaction, carrying out all the formalities.

Q. I understood you to say this morning that after you and Cuadra agreed upon the bases of this agreement, you went to the house of Doña Petronila Noya and then you went to the house of Doña Manuela Gutman, Cuadra accompanying you to both
455 places, and in the house of Doña Manuela it was that you had the champagne or rejoicing, and after Cuadra visited Doña Manuela he goes with you to Doña Maria.

Ans. Yes, sir; then we went to Mrs. Maria's house. I think that is what I stated this morning.

Q. Why didn't you make a notarial document in the first place without the formality of this private document; why this roundabout method?

Ans. I didn't think that was a round-about way. I thought it was a compulsory contract for the parties, and taking into account the fact that I had already been in Humacao for several days and I had to come back to San Juan the following day, the formalities of converting it into a public deed could be left until some time afterwards. I think the documents were immediately left with Mr. Aldrey, the Notary, who was absent at the time. I think some delay was occasioned by the absence of Mr. Aldrey, but four years have elapsed.

Redirect examination.

(By Mr. PETTINGILL:)

Q. Were there other Notaries in Humacao besides Aldrey at that time?

Ans. I believe not.

Q. Which house did you go to first with this private agreement?

Ans. Together with the others, I went first to the house of Mrs. Petronila.

Q. Why did you go to Petronila first?

Ans. Because Cuadra took us there.

Q. And then why did you go to Doña Manuela's before you went to Doña Maria's?

Ans. Because we agreed to do that; because that was our inspiration, following our own inclination or thought in the matter.

Q. I want you to state clearly and expressly whether the $30,000 mortgage given to your brother Guillermo had any connection whatever, and if so, what, with your fees for attending to this business for Doña Manuela.

Ans. It had no relation or bearing at all with it.

456 Q. When did your brother Guillermo leave the Island; do you know the date in 1902?

Ans. I left here in July and in that same month he went away to Europe. Shortly after I came from the States it was his turn to go to Europe and he went to Europe via New York. I think that it was in the second half of July, 1902.

Q. And when you went away on August 27th had he returned or was he still away?

Ans. No, he was absent yet because he sailed away a few days before I did in July, 1902. I could not give you the dates accurately.

Q. Just one question with regard to the claim of Doña Manuela. State if you can, more or less, how much Doña Manuela claimed or you claimed for her, to have paid in discharge of the debts of the estate of José Maria Rios y Berrios during her administration?

Ans. Over $60,000 or $70,000.

Mr. PETTINGILL: That is all.

(By the COURT:)

Q. I want to know the night that you went to have this paper signed who all were there; who went with him?

Ans. We went to several houses, but to the house of Mrs. Maria, the parties who went there were Mr. Argueso——

Q. That is a witness?

Ans. Yes, sir. José Maria Cuadra, Mr. Francisco Noya——

Q. That is a brother-in-law?

Ans. Yes, sir; brother-in-law of Maria.

Q. The husband of Petronila Rios?

Ans. Yes, sir.

Q. Where did you meet him to go to that house that night?

Ans. Paco Noya went with us to Petronila's house.

Q. I am speaking of Maria Rios' house. Why was it necessary for Francisco Noya to go along to Maria Rios' house?

Ans. It was not necessary, but in view of the fact that he was her brother-in-law, he came with us.

Q. Wasn't he quite active in this matter?

Ans. No, sir.

Q. Didn't he do any talking there at all?

Ans. He might have said something but I don't remember. All of us had something to say.

Q. How long before that paper was signed by Doña Maria was it signed by Doña Petronila?

Ans. I think we scarcely took an hour on the three calls that we made. We went first to the house of Mrs. Petronila, then to the house of Mrs. Manuela, and then to the house of Mrs. Maria and we took half an hour for the trip.

Q. You said you were attorney for this estate fifteen years?

Ans. No, sir.

457 Q. How long then?

Ans. Seven days before, in January, 1901, was the first time that I took part.

Q. Who employed him?

Ans. Mrs. Manuela Gutman.

Q. Didn't she have an attorney before?

Ans. Her attorney for a good many years was Mr. Arturo Aponte who was appointed judge either for Ponce or Mayaguez. He was the attorney she had for a long time.

Q. And Cuadra represented both of these ladies at that settlement?

Ans. Yes, sir.

Q. And you never saw this lady until that night that she signed that paper and you were introduced to her?

Ans. I hadn't seen up to that time either Mrs. Petronila or Mrs. Maria.

Q. Did she live in Humacao?

Ans. Yes, sir.

Q. During these seven days' negotiation he had no conversation with her at all?

Ans. No, sir; the first time I went to the house was the night I went to the house with Mr. Cuadra and the witnesses.

Q. How long was he at the house?

Ans. Something like 10 or 15 minutes, more or less.

Witness retires.

458 Witness: JOSE MARIA CUADRA.

Direct examination.

(By Mr. PETTINGILL:)

Q. What is your name?
Ans. José Maria Cuadra.
Q. Your profession?
Ans. Lawyer.
Q. How long have you practiced?
Ans. Six years, more or less.
Q. During those six years where have you practiced?
Ans. At Humacao.
Q. Do you know Maria Rios de Rubio?
Ans. Yes, sir.
Q. Do you know her signature or handwriting?
Ans. Yes, sir.
Q. (Handing witness a paper.) Will you state whether you can identify that as hers?
Ans. That is her signature.

Mr. PETTINGILL: Now I offer this; a paper indentified by Landron this morning.

Mr. DEXTER: No objection.

(The document is admitted in evidence and marked Exhibit 3 for the Defendants.)

Mr. PETTINGILL: Counsel for defendants now offer in evidence a certificate of the Secretary of the Municipal Court, District of San Juan, certifying to the contents of an "expediente" presented to that Court on October 29, 1901, by Juan F. Vias Ochoteco as the lawyer and representative of the complainant in this case, Maria Rios viuda de Rubio.

Mr. DEXTER: I will reserve my objection to that until morning.

(Court adjoins until 10 A. M., May 12, 1905.)

459 EXHIBIT NO. 3 FOR THE DEFENDANTS.

Translation.

To the Court:

Don José Ma. Cuadra, Lawyer, in the name and representation of the sisters Doña Maria Rios y Gutman, widow of Rubio and Doña Petronila Patricia Rios y Gutman, accompanied by her legitimate husband Don Francisco Noya y Frias, and Don Rafael Lopez Landron, lawyer, for Doña Manuela de Gutman, widow of Bustelo, all of lawful age, as it appears in the proceedings, appear before the Court, and in the voluntary testamentary proceedings of the deceased testatator Don José Rios y Berrios, in accordance to law we state: That by virtue of the fact that we have arrived at a satisfactory agreement of settlement, regarding all our judicial and private differences, (disputes) we are ready in order to fully comply with the will of the testator, as set forth in clause 17 of his last will

executed before the Commissary ("comisario"), to separate ourselves and desist from the prosecution of this suit, and of all its incidents, so that we may adopt the resolutions which we may agree upon, regarding the division of the hereditary rights and equitable distribution of property, between all the participants, in accordance with article 1046 of the Law of Civil Procedure.

Therefore, and with the object that this "apartimiento," dismissal of the suit may have all the eficacies and legal effects; We pray the Court that it may order that the ladies interested, and whom we represent, may ratify the same under oath, as contained in this writing which they sign, and thereafter completely dismiss the continuance of this voluntary suit, as well as all the incidents thereto, and ordering that the costs may be taxed, and that upon the
460 payment thereof that these expedientes may be filed away.

We ask for justice in Humacao on the seventeenth day of January nineteen hundred and one.

(Sig.)	R. LOPEZ LANDRON.
(Sig.)	JOSÉ MA. CUADRA.
(Sig.)	PETRONILA P. DE NOYA.
(Sig.)	MARIA R. V. DE RUBIO.

(Signed) M. S. GEIGEL,
Int. U. S. Court.

461 10 A. M., TUESDAY, *May 12th.*

The COURT: On the offer as made yesterday, my impression is that it is in conflict with the line of authorities and I am open to conviction.

Mr. PETTINGILL: Our side is perfectly willing and anxious to have this whole matter testified to and Counsel may object and Your Honor rule on it as it comes up. It must be asked in order to save our position that we are not concealing it in anyway.

Mr. DEXTER: We don't go so far as to ask Your Honor to keep this witness out altogether.

(It is decided to allow witness to testify and objections to be ruled on as they come up.)

Mr. DEXTER: No objection to the paper offered last night; certificate of the Secretary of the Municipal Court of San Juan.

(Mr. Pettingill reads same to the Court and it is marked Exhibit 4 for the Defendants.)

The COURT: It is offered for the purpose of showing that the private agreement was hereby ratified by the present complainant through her attorney, eight months afterward; and further, for the purpose of contradicting her statement that the day afterward she found out that she had been deceived in the matter and never authorized anybody thereafter to fulfill it.

Mr. DEXTER: That is a matter of argument. Your Honor will notice that she has not signed it.

Witness: JOSE MARIA CUADRA, recalled.

(By Mr. PETTINGILL:)

Q. You have already testified as to the time that you have practiced as a lawyer.

462 EXHIBIT 4 FOR DEFENDANTS.

Municipal Courts of Porto Rico.

Pedro Gonzalez Garcia, Clerk of the Municipal Court for the District of San Juan, certifies: That among the records under my charge there is a roll, or expediente, which literally copied reads as follows:

"To the Municipal Judge:

"SIR: Juan F. Vias Ochoteco, lawyer, on behalf of Doña Maria Rios viuda de Rubio, of lawful age, property owner and resident of Humacao, hereby files a compliant in conciliatory proceedings against Doña Manuela Gutman viuda de Bustelo, also of lawful age, property owner resident of this city at No. 21 Allen Street, to the end that she consent to the following:

1st. To make immediate delivery of the farm known as Culo Prieto, situated within the jurisdiction of Naguabo, which farm belongs to the complainant in common and pro-indiviso with her sister Petronila, on account of having been adjudicated to them in pursuance of the testamentary settlement of the estate left at the death of their father José Maria Rios y Gutman, and

2nd. To also execute in favor of my client the notarial deed referred to in the private contract and entered into at Humacao with the intervention of attorneys Lopez Landrón and Cuadra, with the the view of carrying into effect the aforesaid division of property, and that she expressly state in said deed that the property which the defendant Doña Manuela may get by virtue of said transaction, the transfer of which in her favor shall be signed by my client, were acquired by inheritance from her son had of her first marriage, Don José Maria Rios y Gutman.

The Court will please appoint a day and hour, within the shortest possible time, for the appearance of defendant, to whom the within copy shall be delivered.

San Juan, P. R. October 29th, 1901.

Lic., JUAN F. VIAS.

There is a rubric.

SAN JUAN, *Oct.* 29, 1901.

It was served on this day together with the within copy, the 31st instant at 2 p. m. being appointed as the day for the ap-
463 pearance, the parties being authorized to appear in person, or through an agent in due form and accompanied by a good

man, and they are hereby warned that such action as the law provides will be taken, should they fail to appear.

It was decreed and signed by the Judge, to which I certify.

DAMIAN MONSERRAT.

There is a rubric.

JOSÉ P. MANZANO.

There is a rubric.

The foregoing decree was by me served upon Mr. Juan F. Vias Ochoteco, on the 29th day of October of the current year, which I read to him in full delivering to him the subpœna, in testimony whereof he signed and I certify.

Attorney, JUAN F. VIAS.

There is a rubric.

MANZANO.

There is a rubric.

On the 30th day of October, I, the Secretary, personally appeared in the house of Doña Manuela Gutman, and having her in my presence, I summoned her to appear to-morrow 31st instant, at 2 p. m. in this Court, 17 Cruz Street, first floor, to answer the complaint, a copy of which and the proper sub-pœna I delivered to her, she having advised me that she was unable to sign on account of having her right hand dissabled, and at her request the witness present at the time signed for her, to which I certify.

JOSÉ DAUBÉ.

There is a rubric.

MANZANO.

There is a rubric.

The act of conciliation, or conciliatory proceedings, were held on the 31st of October, to which the defendant did not appear, to which I certify.

MANZANO.

There is a rubric.

Issued at the request of Attorney Frank Antonsanti, at San Juan, P. R., this 19th day of April, 1905.

PEDRO GONZALEZ, *Clerk.*

A correct translation:

(Signed) M. S. GEIGEL,
Interpreter U. S. Court.

[Endorsed:] Copy of Certificate of Proceedings in Municipal Court of Maria Rios.

464 Mr. DEXTER: I want to question him as to whether he heard the testimony of Mr. Landron.

(By Mr. DEXTER:)

Q. Were you sitting in Judge Pettingill's office there yesterday while Mr. Landron was testifying?

Ans. I arrived when he was making the last part of his testimony.

Q. Where were you; in this little room on the other side of that partition?

Ans. Yes, sir.

Q. On what point was he testifying while you were sitting there; do you recollect?

Ans. I remember that he was asked the last question propounded to him by the attorney and I also heard a question propounded to him by the Honorable Judge.

Q. On what subject; do you recollect?

Ans. No, sir; I didn't hear all of it.

Q. You don't know what he was testifying about?

Ans. Not completely as to everything, no.

(By Mr. PETTINGILL:)

Q. From what institution did you secure your title of lawyer?

Ans. Havana University, Island of Cuba.

Q. After how many years of study of law?

Ans. I studied law officially for six years; one year preparatory course and five years of legal studies.

Q. Do you know the complainant Maria Rios de Rubio?

Ans. I have known her since I was a boy.

Q. Have you at any time represented her as her attorney?

Ans. Yes, sir; the testamentary proceedings of her father, José Rios y Berrios.

Q. When did that employment begin, as near as you can remember?

Ans. At the end of the year 1900.

Q. State, if you know, whether any other attorney had previously represented her in that matter.

Ans. In the voluntary testamentary proceedings of Don José Maria Rios y Berrios a great number of attorneys acted in representation of the parties.

465 Q. Do you know the sister of Doña Maria, Doña Petronila?

Ans. Yes, sir; I was also counsel for her.

Q. When did your representation of her begin?

Ans. At the same time as Doña Maria.

Q. What was the first work you did for her?

Ans. To file a petition before the District Court of Humacao asking for the continuance of the voluntary testamentary proceedings of their father José Maria Rios y Berrios.

Q. About when was that presented?

Ans. I could not give you the date. I know it was some time in the *past* part of 1900.

466 Q. Why was the presentation of such a petition necessary?

Ans. Very simple; I studied the records which were on file in the clerk's office of the Humacao District Court, which "autos" or records were composed of five voluminous packages or bundles. After studying all the questions involved in those records, I found that in the last action taken by the Court——

Mr. DEXTER: We want to stop there and object to that. They could have brought those records here and supplemented them with testimony.

The COURT: Just tell him that he cannot tell the contents of the papers either. He was simply asked why he did it.

Ans. That is what I was going to explain to you.

Q. Do so without reference to any document.

Ans. I presented that petition because I considered that, under the law, the proper thing to do was to ask for the continuation of the voluntary testamentary proceedings of José Maria Rios y Berrios, according to my knowledge and belief.

Q. Do you know Mr. Rafael Lopez Landron?

Ans. Yes, sir.

Q. Did he come to Humacao soon after the filing of that petition?

Ans. No, sir; long afterwards.

Q. Well when?

Ans. Two or three months afterwards, more or less.

Q. Had anything been done with the petition meanwhile?

467 Ans. My petition was approved.

Q. After Mr. Landron arrived there, what, if anything, was done touching this suit?

Mr. DEXTER: That is objected to for the reason that it involves circumstances and facts in connection with his employment as attorney of this woman.

The COURT: Yes, and I don't think it is involved in this matter at all. It is involved in this way, that this private agreement was the culmination of the testamentary proceedings. What the suits were or the character of them we cannot go into.

Mr. PETTINGILL: Here is a lawyer whose character and veracity are attacked. It would be a great injustice to close his mouth entirely.

Mr. DEXTER: We object to any statements made by the attorney to third parties.

The COURT: Mr. Dexter raises the question that any fact as well as any disclosure is not admissible.

Mr. PETTINGILL: Here is what we propose to prove: That this witness, representing the complainant, entered into negotiations with Mr. Landron representing the opposite party; and we do not propose to prove details of any consultation with his client, but what

468 he as the agent of his client, did with the attorney of the opposite party; and we further propose to prove that during this time he was consulting with his client, and, unless it is objected to, we propose to prove that his client approved of it. Counsel cannot produce a single case that the communication of counsel to third parties is privileged. The very basis of the rule of confidential communication is something communicated by the client to an attorney that he is not to disclose, and if it is communicated for the purpose of being disclosed, it is not a confidential communication. I may as well submit some law right here (Cites authorities). The rule is plainly deduced that it must be communicated for the purpose of being confidential. When instructions are given for the

purpose of being communicated, there is no privilege. Certainly the rule does not go so far, and there is no case which says that it goes so far as to prohibit the attorney from saying what he did as a result of the communication, and that is what we are trying to prove here.

The COURT: There is a phase of it that the door is opened by herself; that she said here on the stand that she refused to sign and this man said that nothing could be done.

Mr. DEXTER: We don't question that point.

The COURT: The fault of your offer is that it lets this man judge what was or was not a confidential communication.

Mr. PETTINGILL: Has a client a right to object and keep out from the court what he did as her attorney? If this question is to be shut out, an attorney could never testify in a court as to what he did.

Mr. SWEET: He can't testify to very much. Counsel for complainant objects to the offer made, upon the ground that it is incompetent in that it is a violation of the confidential relation between client and counsel.

The COURT: The objection to the offer of testimony as made is sustained. The witness could not answer the question of the negotiations without the very language of it violating the relation as counsel. It would be, in my judgment, a violation of the rule.

Mr. PETTINGILL: To which ruling Counsel for defendants except.

469 Mr. PETTINGILL: We make the offer to prove by this witness that the negotiations as conducted by him and closed by him with Mr. Landron, the attorney for the other side, were approved by the complainant as his client at that time, and we make this offer to contradict the statement already made by the complainant as a witness, whereby she has waived the privilege of confidential communication.

Mr. SWEET: We object to that as a violation of the rule.

The COURT: The part of the offer to contradict the witness will be admitted. All other portions of the offer are ruled as inadmissable.

Q. Did you, after Mr. Landron arrived in Humacao, have negotiations touching a settlement of the disputed matters between his client Doña Manuela and your clients Doña Maria and Doña Petronila?

Ans. We had a settlement but not a negotiation.

Q. (The last question was repeated to the witness with the word "conferencias" substituted for "negotiations.")

Ans. Yes, sir.

470 Q. On the night of the 16th of January, 1901, did you go to the house of Doña Maria Rios?

Ans. Yes, sir.

Q. Had the attention of Doña Maria been called to the execution or signing of a private contract between herself and her sister Doña Petronila and her mother Doña Manuela at any time before that night?

Ans. How could I call the attention of Mrs. Maria without the document having been signed?

Q. Did you or not call her attention to the fact that she would be asked to sign one?

Ans. That the document of transaction, the private agreement, would be taken to her to sign.

Q. When did you notify her of that?

Ans. When the transaction was agreed upon?

Q. Yes, but what hour of the day or day previous?

Ans. The same day in the afternoon. When the bases for the transaction had already been decided upon, she was told when everything was over or completed the paper would be taken to her for her signature.

Q. Who told her that?

Ans. Myself.

Q. Where?

Ans. In her own house.

Q. When, as near as you can remember; the hour of the afternoon?

Ans. Before the document was drawn up a good many interviews took place.

Q. Confine yourself to the answers. As near as you can remember, the hour.

Ans. Between three and four in the afternoon, more or less of the same day in which the document was signed.

471 Q. What hour after that was it that you went there to obtain her signature?

Ans. It might have been between half past seven and eight o'clock in the evening.

Q. Did you go at that hour?

Ans. Yes, sir.

Q. Who, if anyone, went with you?

Ans. Mr. Manuel Argueso, Jesus Almiroty, Rafael Lopez Landron and Francisco Noya Frias.

Q. Whom did you find at the house?

Ans. We found her with her children.

Q. Anybody else?

Ans. Nobody else that I remember; at least in the parlor.

Q. State all you remember of what occurred there that night.

Ans. When we got there, Mr. Francisco Noya Frias introduced Mrs. Maria Rios to lawyer Landron. After that the agreement or private contract was read.

Q. By whom?

Ans. By Mr. Manuel Argueso; after that, Mrs. Maria Rios took it and she read it, made a certain remark about forty acres of land which belonged to the heirs of Bustelo.

(By the COURT:)

Q. Her deceased brother?

Ans. No, sir; they are brother and sister by the second marriage.

Q. Go on.

Ans. The matter was explained to her and she was told.

Q. By whom?

Ans. Landron and me both; that those forty acres had been recorded in the Registry of Property in favor of Bustelo. Mrs. Maria then did not object to it and signed; had no objection to make and signed the paper. After she signed, I signed it; after that, we left the house and that is all.

Q. Who had already signed before that, if anybody?

472 Ans. The document had already been signed by Petronila Patricia Rios, her sister; by the husband of Petronila Patricia, Francisco Noya Frias; Mr. Lopez Landron; Mr. Manuel Argueso.

Q. Do you remember any further conversation which took place at Mrs. Maria's house in the presence of all these gentlemen?

Ans. Mrs. Maria then asked if the rentals would then be collected by Mrs. Manuela; as regards the usufruct to which she (Manuela) was entitled.

(By the COURT:)

Q. To whom was that inquiry addressed?

Ans. To us.

Q. Who does he mean by that?

Ans. To lawyer Landron and to me, and we replied that the usufruct was renounced by Mrs. Manuela.

(By Mr. PETTINGILL:)

Q. Did that question and answer occur before or after Mrs. Maria signed?

Ans. Before she signed it.

Q. How long did the meeting last?

Ans. Between 20 and 30 minutes, more or less.

473 Q. What happened after that?

Q. Have you told all that occurred during the visit?

Ans. Yes, sir; all.

Q. Then after the visit what did you do?

Ans. After that a rough draft of a certain document was drawn, desisting from the voluntary testamentary proceedings of José Maria Rios y Berrios.

Q. Who drew that up?

Ans. Both Landron and myself.

Q. Was Doña Maria present?

Ans. No, sir.

Q. What was done with this rough draft?

Ans. It was written definitely on the following day.

Q. That same night did Doña Maria sign any other document in your presence?

Ans. No, sir; she did not.

Q. (Handing witness Defendants' Exhibit 3) Is that the document to which you refer?

Ans. Yes, sir; this is it.

Q. I believe you have already testified that this is Doña Maria's signature?

Ans. Yes, sir.

Q. Did you see her sign that?
Ans. It was signed before me.
Q. When?
Ans. A few days afterwards.
Q. How many, as near as you can remember?
Ans. It was written in a clean sheet of paper on the following day, and, although it appears dated on the 17th, it was signed by her a few days after that. It was previously signed by Petronila Patricia.
Q. Was it at that time signed by Mrs. Manuela, the mother?
Ans. No, sir; she did not sign it.

(Mr. Pettingill reads the document in question to the Court.)

Q. Did Doña Maria read that at the time she signed it, or not?
474 Ans. Yes, sir; she did.
Q. Did you present at any time to Doña Maria a copy of the transaction that she had signed?
Ans. I think so but I cannot state it as a fact.
Q. It is provided in the private agreement, is it not, that it shall be extended into a public document?
Ans. Yes, sir.
Q. Did you notify Doña Maria anything about the preparation of the public document?
Ans. Under the provisions of one of the clauses of the document, the Notary Public, Mr. Aldrey, was entrusted with writing out the public instrument within forty-eight hours, but in view of the fact that Mr. Aldrey was not at the time in Humacao because he was at Vieques, on his return on the 18th of the same month, he was handed the private contract so that he could convert it into a public instrument. I asked him at what time we should come to sign it. We gave him the document at 8 o'clock in the morning.
Q. Of the 18th?
Ans. Of the 18th. He said to me that we could come back in the afternoon and we did go in the afternoon to sign, Mrs. Manuela Gutman and Mrs. Petronila Patricia Rios. Mrs. Maria did not attend. We waited there awhile for Mrs. Maria, and, in view of the fact that she did not come, Mr. Francisco Noya Frias, husband of Mrs. Petronila, and myself went after her——
475 Q. At that time did you tell Doña Maria that nothing more could be done?
Ans. Nothing else as to what?
Q. At the time you went to her house did she refuse to sign because she had been deceived in the contents of the instrument? And she had refused for this reason did you tell her that nothing more could be done about it?
Ans. For me to answer that question I would have to make an explanation.
Q. Can't you first say yes or no whether she made that statement and you made that reply?
Ans. If she was deceived?
Q. When she signed the document.

Ans. No, sir.

Q. She didn't say that?

Ans. No, sir.

Q. What reason did she give then for refusing to sign?

Ans. The document was not taken to her house. The document was at the Notary's, Mr. Aldrey's, office where she had to go to sign.

Q. Before this had she been furnished with a copy of that private agreement?

Ans. Yes, sir; I think so. I couldn't tell you that for a fact.

Q. Was her reason for refusing given at that time, because on looking at that copy of the private document it was not the private document she supposed she was signing that night?

Ans. No, sir.

Q. What reason did she give for not signing?

Ans. She said that she didn't desire to go to sign that paper because she was tired of giving her signature.

476 (By the COURT:)

Q. What did you tell her would be the result when she wouldn't sign?

Ans. I called her attention to the obligation under which she was to sign the public deed under the provisions of the transaction or the private instrument, on agreeing to the provisions of the private instrument and if she did not sign she would be in danger sooner or later of the other contracting parties all having a complaint filed against her to compel her to execute the public deed, to which she was obliged according to the provisions of the law?

Q. That was the last; you left?

Ans. Yes, sir; but something else happened.

(By Mr. PETTINGILL:)

Q. He means there was more conversation?

Ans. Yes, sir.

(By the COURT:)

Q. She persistently refused to sign?

Ans. Yes, sir; after that I left her house and went to the Notary's office, Mr. Aldrey's, to report what had happened, with Mr. Noya.

(By Mr. PETTINGILL:)

Q. Can you remember whether it was before or after that refusal of hers that she signed this document (referring to Defendants' Exhibit 3)?

Ans. After the refusal.

Q. This instrument, was it signed before or after her refusal?

Ans. The first paper was the private agreement, and after that, this document; after this, the deed or public instrument with regard to the transaction was to be signed.

(By the COURT:)

Q. Where was that document signed?

Ans. At her own house.
Q. The same night?
Ans. No, sir.
Q. When did he go there to have that signed?
Ans. I remember having an idea of going to her house on the day following that rough draft was made; on the following day in the morning.

(By Mr. PETTINGILL:)

Q. Did you have any other interviews with your client after that?
Ans. Interviews in the true sense of the word, no; but to go and see her and speak to her about the matter, yes.
Q. How many times did you speak with her about it? You mean that you didn't speak to her as her attorney or did——
Ans. Yes, sir; as attorney.

477 (By the COURT:)

Q. What does he mean by his answer that in the true sense of the word he never had any other interviews?
Ans. I mean to say by that that debat-s with regard to the matter that she entrusted to me for the purpose that I should give her instructions, I did not have, but what I did have was certain interviews. For instance I asked her for certain notes in order to execute or write out the "expediente dominio." I asked her for the plans of the estate and things of the same nature or character.

(By Mr. PETTINGILL:)

Q. How long did you continue to represent her as her attorney?
Ans. I continued representing her as her attorney six or seven months more after the date of that instrument, up to the month of June.
Q. How was your employment terminated; the relation of attorney and client, how was it terminated?
Ans. Six or seven months afterwards, more or less, I received a letter from Mrs. Maria, written in her own handwriting and signed by her.
Q. (Showing witness a paper.) Is this the document?
Ans. Yes, sir; this is it.
Q. After the receipt of this letter you no longer sustained the relation of attorney and client?
Ans. I complied with the petitions made in that letter in full and ended my relations with her as attorney.

(The letter is offered in evidence. There is no objection on the part of complainant, and it is read to the Court and marked Exhibit 5 for the Defendants.)

Q. Can you state from memory whether this is the date on which you received the letter or whether the date in the letter is the correct date?
Ans. Yes, sir.
Q. Did Doña Maria ever say to you that she did not know what

was in that contract that she signed that night of the 16th of January?

Ans. No, sir; she never said any such thing.

Q. Did she ever protest to you that it was not in the proper form?

Ans. No, sir; never.

Q. Returning to the night of the contract, of the transaction, did either you or anyone of those present tell Doña Maria before she signed that, what she was signing was merely a basis for an agreement and if the parties did not come to the agreement, that document would be torn up?

Ans. No, sir.

Q. What was the reason that the agreement signed the night of the 16th of January was drawn in the shape of a private agreement and not at that time of a public document?

478 Mr. SWEET: It is objected to as incompetent because in representing her we do not know what reasons she may have given him or he may have given her.

The COURT: The objection is sustained; it really comes under the other ruling.

Mr. PETTINGILL: Note an exception.

Q. After the receipt of this letter by you, of July 17th, did Doña Maria ever, either verbally or in writing, give you any other reason for terminating the relation of attorney and client?

Ans. After this letter I don't remember of any other act having taken place, except the presentation of my letter renouncing my engagement of attorney with her.

Q. According to your recollection, there was no other reason?

Ans. No, sir; no more.

Mr. PETTINGILL: That is all.

Cross-examination.

(By Mr. DEXTER:)

Q. Señor Cuadra, after Doña Maria refused to sign the public agreement which you requested her to sign, did you continue to represent Doña Petronila Rios in so far as her interests were concerned?

Ans. Yes, sir.

479 Q. And in your representation of Doña Petronila you defended or rather sought to assert the validity of that private contract as against Doña Maria?

Ans. You are asking me about Mrs. Petronila?

Q. Yes.

Ans. Mrs. Petronila Patricia Rios went personally to the Notary's office to sign the document.

Q. And as attorney for Doña Petronila Patricia Rios you endeavored to have the private contract carried out?

Ans. Yes, sir; of course I did.

Q. Do you recollect some conferences you had with Mr. Landron representing Doña Manuela Gutman in that transaction after the signing of the private contract?

Ans. After the transaction had been signed?

Q. Yes.

Ans. Yes, sir; I remember.

Q. You have appeared as attorney in various suits in the District Court of Humacao against Doña Maria Rios haven't you since that time, and relative to this matter?

Ans. Replying to all the lawsuits that she has initiated or instituted.

Q. That is a fact?

Ans. Yes, sir.

Q. How long have you known Mr. Landron, Señor Cuadra?

Ans. By reputation I know him since I was a boy, but personally since the private agreement.

Q. When was it that he first went to Humacao to talk to you about this private agreement?

Ans. He went to Humacao within the first 15 days of January, 1901.

Q. Who was it that suggested the making of this private contract; you or he?

Ans. The first propositions or suggestions were made by him.

480 Q. Throughout that public conference that was held that night in the house of Doña Maria, did you hear her say anything about the usufruct to which Doña Manuela might or would be entitled.

Ans. Yes, sir.

Q. She did raise that question?

Ans. She did not raise the question; she asked if Mrs. Manuela would also receive that usufruct.

Q. Did you or Landron answer how long that usufruct would continue?

Ans. No, sir; wait a minute. We answered her that Mrs. Manuela would renounce the usufruct, as was done, as she did renounce it.

Q. Now this petition to the court to stop the testamentary proceedings, where and when was that signed by Doña Maria?

Ans. I have said before, on the morning of the 18th.

Q. The first petition before the transaction; to continue and not to stop the testamentary proceedings.

Ans. I could not give you the exact day and month, but it was one of the last months of 1900.

Q. This petition to desist from the testamentary proceedings, when was that signed?

Ans. By whom?

Q. By Doña Maria; you said it was signed by her. When and where was it signed by her?

Ans. On the morning of the 18th.

Q. Where?

Ans. At her own house in the dining-room.

Q. Who was present?

Ans. Nobody.

Q. Just you and her?

Ans. Yes, sir; she and I.

Q. At whose request did she sign it?

Ans. I presented the petition to her; she read it and then signed it.

481 Q. Did you tell her to sign or not to sign?

Ans. To sign it; I was her attorney.

Q. Did Paco Noya take some interest in having this private contract carried out and signed?

Ans. The same interest that all had.

Q. He accompanied you around to his own house, then to Doña Manuela's and then to Doña Maria's?

Ans. Yes, sir.

Q. He was the one that let you in Maria's house that night?

Ans. Not me but Landron; I already had admission to the house.

Q. Did you go to the house of Doña Manuela with Landron when she signed?

Ans. Yes, sir.

Q. Were you there when the champagne was taken?

Ans. Yes, sir.

Q. And everybody was happy there?

Ans. Why not? The settlement had just been signed; the family was united again.

Q. When you went to see Doña Maria to request her to sign the public document, you told her that it was necessary for her to sign; that she would have to do it; that it was obligatory?

Ans. To sign which document?

Q. The public document.

Ans. I said to her that it was obligatory on her part, according to the provisions of the settlement, to convert it into a public instrument.

Q. When she refused to sign, did you tell her that she could not now set aside the private contract which had been signed by her?

Ans. All I said to her was that she was endangered by the attitude adopted by her by the contracting parties suing her to compel her to comply with the provisions of that transaction, the provision made in the agreement to convert it into a public instrument.

Q. And you advised her to sign the public document?

Ans. Yes, sir.

Q. When you first had your conferences with Landron, you held out for her reserved rights, did you not?

Ans. When I had the first conference with Mr. Landron, I stood out for all that Mrs. Maria and Petronila claimed.

Q. And in this public document there was nothing of those claims?

Ans. The public deed was the private contract except that it was before a Notary Public.

Mr. DEXTER: That is all.

482 Re-direct examination.

(By the COURT:)

Q. State that I understood him to state a moment ago that he, in a conversation with Mrs. Rios, had told her refusal to sign that paper of ratification would likely get her into trouble and that the other parties would likely sue for enforcement of the contract. Ask him why, as he continued to represent Madam Petronila, he did not advise the enforcement of the contract instead of the dominion proceedings, he having already testified that he so told her that she would render herself liable, and, on continuing to act for Petronila, why he didn't have that suit brought instead of going at the proceedings of dominion.

Ans. In the first place because in order to institute the expediente of dominion it was not hardly necessary; it was not a necessary element that the document should be converted into a public instrument. In the second place, because I could not advise my clients to fight among themselves, but that later when Mrs. Maria Rios asked for the nullification of that contract, my duty was complied with.

Q. He has not answered the question. Just say that he has already testified that he notified this lady that if she did not sign it, she would lay herself open to a suit for specific performance of the contract. Why didn't he bring a suit to enforce her contract; he had that remedy, hadn't he?

Ans. Yes, sir; but I could not act without instructions from my clients. They themselves did not want any family troubles.

Q. Did he know that Mrs. Maria Rios didn't want any either?

Ans. Yes, sir; I kne- that too.

Q. How long was this man admitted to the bar before he got this suit?

Ans. I believe that two or three years before I had been admitted.

Q. I understood he was only admitted 5 years.

Ans. Yes, five years, more or less.

483 Q. Ask him if he knew Mr. Landron was coming there to Humacao?

Ans. No, sir, I didn't know he was attorney for Manuela.

Q. How did he know he was in town?

Ans. By himself; he sent word to me and asked me to have a conference with him at the house of the priest.

Q. You saw him daily?

Ans. Yes, sir; during the time that those interviews took place, until the consummation of the private agreement we saw each other daily.

Q. Were you employed by both sides at the same time?

Ans. Yes, sir; by both; by Mrs. Maria and Mrs. Petronila.

Q. When?

Ans. When I took charge of their representation in that suit.

Q. When was that?

Ans. I could not give you the day and month, but I can tell you that it was in the last months of 1900.

Q. I mean were they both there and arranged when they employed him?

Ans. Yes, sir; together. They did not come to my house. I went to their house called there by them; at their instance.

Q. I see by this paper that you drew for them, a statement that some subsequent agreement was to be made. It recites here; So that we may adopt the resolutions which we may agree upon. Didn't that look to a future agreement?

Ans. No, sir.

Q. Who drew this paper (referring to Defendants' Exhibit 3)?

Ans. It was drawn by the two of us; Mr. Landron and myself.

Q. In the English translation it refers to an agreement to be made hereafter?

Ans. May I be permitted to see the document?

Q. Yes; that is the petition to the court that was signed two days afterwards. What agreement does it refer to to be made afterwards? Did you tell this lady that if she didn't sign the paper that you brought to her, that the heirs would go on in the court and have the property divided anyway?

Ans. No, sir; if you understood me so, I have not been understood. May I explain that?

Q. Tell him that this woman signed a paper there that night, which all called, the woman herself and the two lawyers, a basis of an agreement to be subsequently prepared in a public document. Ask him why, with an incomplete document like that and which was to be followed by a public document, he used it as if it were a public document?

Ans. Because it was a perfect contract carried out by the parties and sealed under the laws.

Q. Just say to him, doesn't it call for a public document to be signed with- forty-eight hours?

Ans. Yes, sir; it does.

484 Q. Ask him where he got the right to dispense with it right under that order. Ask him if it was meant to be a settlement of this family estate by a public document, why was it necessary to make the private paper at all. Was it any more trouble to make the public document?

Ans. Yes, sir; the transaction might have been made by public instrument just the same as it might have been by parole.

Q. To me it looks as if the paper were a private paper to dispense with a public document and I want to know how he explains it.

Ans. The fact is that we did not omit that formality of the law. The fact is this, that it was absoutely impossible to make a public instrument because, inasmuch as there was only one Notary Public at Humacao at that time, that one Notary Public was at that time in Vieques on official business, and that is why it was agreed in the contract itself, the private agreement, that within the period of 48 hours or as soon as Notary Public Aldrey arrived at Humacao the private document would be converted into a public instrument, but if Notary Aldrey had been there at the time, the public instrument would of course have been made at the time instead of the private instrument

because a public instrument is always safer and preferable to a private agreement.

The COURT: That is all.

Witness retires.

485 Witness: FRANCISCO NOYA FRIAS.

Direct examination.

(By Mr. PETTINGILL:)

Q. What is your name?
Ans. Francisco Noya Frias.
Q. How old are you?
Ans. 32 years of age.
Q. Where do you live?
Ans. I now live at Santurce.
Q. Where did you live in 1901?
Ans. At Humacao.
Q. Are you married?
Ans. Yes, sir.
Q. What was your wife's name?
Ans. Mrs. Petronila Rios y Gutman.
Q. Are you and your wife defendants in this suit?
Ans. Yes, sir; we are.
Q. Do you know the complainant Doña Maria Rios?
Ans. Yes, sir; I know her.
Q. How long have you known her?
Ans. For a long time.
Q. How long have you been married to her sister?
Ans. For over six years.
Q. Then you were married before 1900?
Ans. Oh! yes.
Q. Do you remember the occasion when a deed or transaction or private document was signed in Humacao between your wife, Doña Maria and Doña Manuela Gutman?

Ans. Yes, sir; I remember. If you want me to, I can explain how that transaction was made.

Q. After a little. Was Rafael Lopez Landron in Humacao at that time?

Ans. I don't know at what time you refer.

Q. When that transaction was signed up.

Ans. Oh! yes, he was.

Q. How long before that had he been there?

Ans. He had been there a week, called there by Mrs. Manuela.

Q. During that week, what was Don Rafael doing?

Ans. Inasmuch as Mrs. Maria Rios and my wife had appointed Mr. Cuadra to represent them in the lawsuit that we had instituted against Mrs. Manuela, Mrs. Manuela, in view of the fact that we sued her, sent for Rafael Lopez Landron and he came and then he consulted with Mr. Cuadra, attorney for my wife and myself, to see whether, before he filed the complaint, we were to come to a set-

tlement, and for that purpose I called upon Mrs. Maria to see if she was willing to settle and that I would notify her before she signed to see whether she was satisfied or not.

486 Q. When did you first talk with Doña Maria about it?

Ans. Several times; my wife did not go because for some time past they did not talk to each other, but I used to go to her house very often.

Q. Did you go on the night of the 16th of January when the transaction deed was signed?

Ans. Yes, sir; of course I did.

Q. Who went with you?

Ans. Rafael Lopez Landron, José Maria Cuadra, Manuel Argueso, Jesus Almiroty and myself. I remember that it was about half past seven we left the office or warehouse of Mr. Argueso which was where the deed was drawn up, and went to my house.

Q. These same gentlemen; all of them?

Ans. Yes, sir; all of them.

Q. All right.

Ans. After they left my house we went to Mrs. Manuela's house and after that we went to Mrs. Maria's house.

Q. What was the purpose of you gentlemen going to those three houses?

Ans. After my wife signed the agreement we went to Mrs. Manuela's house to get her signature, and after that we went to Mrs. Maria's house to see Mrs. Maria so that she should see it and see whether she was satisfied with it or not.

Q. About what time did you go to Doña Maria's house?

Ans. It was something like half past seven or eight o'clock when we arrived at Mrs. Maria's house. Inasmuch as the only one familiar in the house was myself, they all took a seat and I went into the dining room and looked for Mrs. Maria to tell her that we were there for the purpose of signing the basis of the transaction. I went to the dining room, and, in view of the fact that I did not find Maria, I went still further in the house and I found Lino there and I asked Linow where Maria was and he told me she was in her room fixing herself up and I went back to the parlor and a short time afterward Maria came in and then Mr. Argueso read to her the basis of the transaction, and afterwards gave it to her to read and she read it and then I myself went to the dining-room where the ink-stand was and got it.

(By the COURT:)

Q. Who handed it to her?

Ans. I myself laid it on the center table.

(By Mr. PETTINGILL:)

Q. Where did you find it? Where did you go for it?

Ans. The arrangement of the house is this: First a parlor, then the dining-room and then a room and it was that room in which the ink-stand was and I brought it. Before that time, Mrs. Maria did not know Lopez Landron.

487 Q. When you went for the ink-stand, did you see Lino?

Ans. Yes, sir; I did see him but he was in a room adjoining the kitchen, but I didn't see anybody else.

Q. Did you see Patricia Algarin there while you were there?

Ans. No, sir; Patricio Algarin is an instructor of the children of Mrs. Maria and he is not in the habit of going in the evening; he usually went in the afternoon. I didn't see him there.

Q. Was he at that time the teacher of Mrs. Maria's children?

Ans. As to that I don't remember. I know that he has always been the tutor of her children but I cannot remember that.

Q. After you gentlemen reached there and before Doña Maria signed, what, if any, conversation took place?

Ans. That I heard?

Q. Yes, that you heard.

Ans. When they all got there they all took a seat.

Q. You have told us about bringing Maria in.

Ans. I didn't hear any more conversation, but after the document was signed.

Q. State what conversation you remember after she signed.

Ans. I remember that Maria asked Landron about a certain 48 acres and he said to her that that was not worth while; that that was already recorded in the Registry of Property; that in order to settle everything and bring ev-rything to a final conclusion that that was not worth while at all; that that was all concluded.

Q. Anything else said that you remember?

Ans. I don't remember anything else.

Q. What, if any, part in the conversation did Señor Cuadra take?

Ans. He was there as attorney for both.

Q. Did he take any part in the talk or conversation?

Ans. What he said after Maria signed the transaction was that he was glad that everything was concluded; after that we began to talk about immaterial private matters and after that, left.

Q. Did you have any subsequent conversation with Doña Maria about the contents of this deed or document that was signed that night?

Ans. Yes, sir; the following day, early in the morning.

488 Q. How did you happen to go there in the morning of the following day?

Ans. I went there and stayed there awhile and she said to me that she was satisfied and requested me to tell Mr. Cuadra to come to see her.

(By the COURT:)

Q. That was the next morning?

Ans. Yes, sir; early in the morning, but I believe that Cuadra did not go because he lives in the country.

(By Mr. PETTINGILL:)

Q. When did you see her next about this matter, if you saw her at all?

Ans. After that I used to go very frequently but I could not tell

you what we talked about. But I used to go there very frequently. There are a number of documents on file in the Humacao Court in which she stated; letters from her sending for me; those letters are on file.

Q. That is not of any importance. What, if anything, do you know of the extension of this private document into a public document? Didn't the contract provide that within forty-eight hours it should be extended into a public document before the Notary Aldrey?

Ans. Yes, sir.

Q. Was that done?

Ans. It could not be done on the following day, in the first place because the Notary was not in town; he was at Vieques. After the Notary came, Mrs. Manuela and my wife went to the Notary's to sign. Word was sent to Mrs. Maria to come and sign and she said she would not sign, and then, not being acquainted with the law, I asked him if she could be forcibly brought to sign and he said she could not. She didn't want to sign.

Q. Did you hear her say that?

Ans. No, sir; I didn't hear it.

489 (By the COURT:)

Q. Where was Cuadra at that time?

Ans. He was in the Notary's office that day.

Q. Why were you taking advice from the Notary Public when you had a lawyer?

Ans. Because that was a spontaneous question on my part.

Q. Was the Notary Public also a lawyer?

Ans. He was not a lawyer.

(By Mr. PETTINGILL:)

Q. Were you and your wife satisfied with that settlement so far as it affected your interests?

Ans. Yes, sir; very satisfied. Mrs. Maria and my wife up to that time for twenty years had been involved in lawsuits with Mrs. Manuela, particularly Mrs. Maria; my wife not so much because she was single.

Q. Did either you or your wife ever receive a reward as a result of that settlement more than Doña Maria received?

Ans. No, sir; nothing.

Q. You afterward bought for your wife from Palmer a certain tract of land?

Ans. Yes, sir; I bought from Palmer 100 acres of land at Naguabo.

Q. Did that purchase have anything to do with this settlement of January 16th?

Ans. It could have nothing to do with it. It is a purchase that I made after the settlement was made.

Q. It is charged in the pleadings that it was transferred to your wife without consideration. Is that a fact? And as a fraudulent

additional inducement to your wife to be satisfied with that settlement. Is that true?

Ans. I delivered to Mr. Palmer $4,000 in bills right in his own Notary's office.

Q. Do you remember the date when you bought?

Ans. I don't remember the date, but I believe it was in June.

Q. Of what year?

Ans. 1902.

Q. Whose money was that, that $4,000?

Ans. That was my wife's money, her savings. She had some heads of cattle and the proceeds of the sale of those cattle she had put away.

Q. You say the payment was made in Mr. Palmer's office?

Ans. Yes, sir.

Q. Where did you get the money; where was it kept?

Ans. My wife had it at home.

(By the COURT:)

Q. I didn't understand where the wife kept the money; was it at home or in the bank?

490 Ans. At home.

Q. Do you know how long she had it at home there?

Ans. Before we were married she had considerable money. All Humacao knows that.

Q. Where did she get it?

Ans. She had that money as proceeds of cattle which she sold, and in addition to that, money which she saved from monthly payments that her mother paid to her, and in addition to that, I had myself $1,000.

Mr. PETTINGILL: That is all.

Cross-examination.

(By Mr. DEXTER:)

Q. Where did your wife keep this money, Don Francisco?

Ans. In the house.

Q. In what part of the house?

Ans. In the house; in a wardrobe.

Q. In a box?

Ans. In the wardrobe; it is a large wardrobe and she has now there $500 if you want to go there and see it.

Q. She had this money all laid out there on a shelf in the wardrobe?

Ans. At first she had it in silver. The house of Rodriguez exchanged for us $800 and gave that money to us in silver and I changed that silver slowly into bills so that it would not take up so much room.

Q. Did you go and get this money out of the wardrobe or did she get it?

Ans. She got it.

Q. How much was left in the wardrobe when you took this out?

Ans. Over $100 might have been left there.

Q. Did you count it?

Ans. No; I don't think I have to tell you what I have in my house; I don't think I came here for that purpose.

Q. And you are in the habit of keeping your money and your wife's in your wardrobe, several thousand dollars at a time?

Ans. In the first place Mrs. Manuela gave to her $800 and odd. Those $800 and odd, the firm of Rodriguez gave me $800 and odd in silver.

Q. Who gave your wife that $800; Doña Manuela?

Ans. Yes, sir; Doña Manuela; a draft on the Spanish bank.

Q. That was after this private contract was signed?

Ans. No, sir; before.

491 Q. When was it that Manuela gave that $800 to your wife?

Ans. That was shortly after we married, but she was in the habit of saving that money little by little.

Q. Where was this property where your wife had the cattle?

Ans. The "Mulas."

Q. Was your wife in possession of "Mulas"?

Ans. No, sir.

Q. Then how did she have the cattle there?

Ans. Because the husband of Mrs. Maria, Mr. Rubio, had those cattle.

Q. How many cattle?

Ans. I don't remember that; how many there were I cannot tell.

Q. More or less?

Ans. I don't remember; that was sold after we got married. More than that, I can tell you that Mrs. Manuela had a lawsuit with Mrs. Rubio on account of those cattle.

Q. And you say you paid this money to Mr. Palmer?

Ans. Yes, sir.

Q. Did you know that Mr. Palmer had not paid anything for that property?

Ans. For what property?

Q. For that property and the other properties which he obtained from Burset.

Ans. As to that I don't know anything because I was at Humacao and Manuela was in San Juan. I know that we signed a transaction which included a clause reserving for herself exclusively the estates situated at Naguabo without reservation or limitation whatever.

Q. That is the private contract of January 16, 1901?

Ans. Yes, sir.

Q. Those are very valuable properties in Naguabo aren't they?

Ans. There are several kinds; some of them are worth $30, some 40 and some $50; they were not all alike.

Q. At the time this contract was signed in January, 1901, you were a very great friend of Maria were you not?

Ans. Yes, sir.

Q. She trusted in you to a great extent?

Ans. So so; but our friendship was due to the transaction which

she herself called me to participate in because I myself alone wanted to have an attorney all alone for myself, and then Doña Maria sent for me and said to me that it would be better for the two sisters to unite; to claim from Manuela combined.

Q. So it was Mrs. Maria that looked for you and first proposed this settlement?

Ans. I had an intention at first to sue Mrs. Manuela for the property that belonged to my wife, but my wife, a sister of Doña
492 Maria, and Doña Maria did not talk to each other. Mrs. Maria learned that I was going to sue Mrs. Manuela and sent for me.

Q. How long before January 16, 1901, was that?

Ans. It was in December.

Q. Of what year?

Ans. Of 1900.

Q. Did she talk to you about making the same settlement with Doña Manuela that was made January 16, 1901?

Ans. How could that be if that took place in 1901?

Q. Did she talk about the same kind of a settlement?

Ans. I proposed to file a complaint against Manuela in 1900, but that settlement was carried out in 1901.

Q. Now with reference to this settlement which was signed January 16, 1901, did she talk to you about that before that night?

Ans. Who, Doña Maria?

Q. Yes.

Ans. We had already had a conversation or talk about that matter. Why not? We had engaged an attorney before that.

Q. There is no reflection upon him. We are just trying to find out the fact. If that be true, how long was it before?

Ans. As to that I don't remember; I don't remember the date. How do you want me to remember in 1905 a thing that happened in 1901?

Q. Was it a week or months or how long?

Ans. Within the same week that the transaction was settled or before.

Q. Was it before Landron came to Humacao?

Ans. Landron was a week in Humacao before the transaction was signed.

Q. And you say you think it was before Landron came that you began to talk with Doña Maria about a settlement?

Ans. We, Mrs. Maria and I, before Mr. Landron came to Humacao, talked about that matter and Mr. Cuadra didn't know at the time that he was to be our attorney.

Q. Did you know that Mr. Landron was coming out to Humacao at that time? Can't you answer that question without a history, yes or no, and then explain afterwards?

Ans. I have to explain to you first before answering yes or no.

The COURT: Tell him that is what he is not allowed to do.

Ans. Yes, sir; I knew.

Q. How long before he came?

Ans. I don't know when it was that Mrs. Manuela wrote to him to come to Humacao.

493 Q. Who told you he was coming?

Ans. I don't know who it was but I remember having been told; Mrs. Manuela has engaged a lawyer because she has found out that you have filed a suit against her.

Q. Do you recollect whether it was Manuela or Mr. Cuadra that told you?

Ans. It was not Mrs. Manuela because we had ceased talking to each other and it was not Cuadra either.

Q. So your interests were opposed to Mrs. Manuela before Mr. Landron came to Humacao?

Ans. Yes, sir.

Q. Then he cleared up the atmosphere and everything was settled and you were all happy?

Ans. What happened there was this: that we all had a conference, Mr. Landron, Cuadra and myself met in the warehouse of Mr. Argueso.

Q. Are you sure that you met there in the Argueso warehouse?

Ans. Yes, sir; of course. I was one of the clerks of Mr. Argueso.

Q. Didn't you meet always at the house of the parish priest, Father Leoncio?

Ans. Yes, sir; we had several interviews in the house of Mr. Leoncio because I think Mr. Landron was stopping there; but where the bases for the transaction were made and where they were drawn, was in Mr. Argueso's warehouse.

Q. What do you mean by the "bases" of the transaction?

Ans. What I mean is this; that Mr. Cuadra and myself and Mr. Landron frequently met and agreed as to certain things, but I remember that Mr. Cuadra often went to Mrs. Maria and talked with her about this and that and she always was conformed with them.

Q. Did you go with him to Mrs. Maria's house?

Ans. No, sir; but sometimes he went alone and sometimes I would go, and on several occasions I would go.

Q. So when you say she always approved, you know that from what he told you?

Ans. No, sir; but what she herself told me.

Q. When did she tell you that?

Ans. Very frequently, every moment; the only thing I am sorry of is not to have in my possession those little notes that are on file in the District Court.

Q. You went every moment to see her; you took a great deal of interest?

Ans. You must bear in mind that that was when the transaction was being framed or agreed upon. After a good many lawyers came, I ceased seeing her often.

494 Q. And you went there often to see her while these conferences were taking place between Cuadra and Landron?

Ans. Yes, sir.

Q. Before that time had you been calling on her every moment?

Ans. No, sir; I didn't talk to her.

Q. And before that time you hardly ever went to see her?

Ans. Not rarely but never; only on one occasion when I went to her house.

Q. And then when you went there during the period of these conferences you were working in connection with Landron and Cuadra to bring about this settlement?

Ans. I did not work in harmony with Mr. Landron. We had a good many differences because Landron proposed a certain settlement to us and we did not accept that settlement because I used to go to Mrs. Maria and say to her: Mr. Landron proposes this. And she was not satisfied with it and objected to that. After that Mr. Landron proposed another settlement which was not agreeable to us, and that is why I say that every now and then I used to go to see her.

Q. And you were representing your wife as having the same rights as Mrs. Maria?

Ans. Yes, sir; it was she who invited us to join her and I used to report to her every now and then what happened in those conferences.

Q. And the nature of the conferences was that she was to get the same as you and your wife?

Ans. Yes, sir; exactly the same.

Q. And they were the preservation of the "bienes reservables" of both the sides?

Ans. We did not say anything about the reservable rights. The transaction was so those "bienes reservables" would be left out entirely. You understand that in that case my wife would be in the same position as Mrs. Maria, which Mrs. Maria is not doing, not being satisfied with what she has done.

Q. Before and at the time of the making of this private agreement, you and your wife were claiming the "bienes reservables"?

Ans. Yes, sir; at first we did.

Q. There was nothing said in the contract about these reserved rights?

Ans. Yes, sir; it states that Mrs. Manuela could dispose or could do anything as she pleased with those properties.

Q. Did you hear anything about usufruct that night, which Doña Manuela would enjoy from those properties?

Ans. I think something was said but I don't remember. I heard Mr. Landron say something about usufruct.

495 Q. Was Mr. Cuadra there?

Ans. Yes, sir.

Q. Was Doña Maria asking about the usufruct which Doña Manuela would have in those properties?

Ans. As I said before, I don't remember very well, because it was then that I went after the ink-stand.

Q. This whole conference took place and ended in a very short space of time, didn't it?

Ans. Something like 10 or 15 minutes.

Q. What happened after you all arrived in the parlor? Did you sit down and have any preliminary talk?

Ans. After they all took a seat in the parlor, in view of the familiarity I have of the house, I went inside the house and not finding her on my way I went to the kitchen and there I met Lino and I asked him: Where is Maria? And he told me she is dressing up and will be out immediately.

Q. Was this man Lino the man who testified here some weeks ago in behalf of Doña Maria?

Ans. Yes, sir; that is the same one; that is her servant.

Q. Then you gentlemen sat down in the parlor and waited until she came in?

Ans. They took a seat in the parlor and I went into the house. She was preparing; she knew beforehand that we were coming and she was getting ready for us.

Q. Who notified her that you were coming?

Ans. I said before that she was told beforehand that we were all coming over there and that is why the gentlemen remained sitting and she took some time to prepare.

Q. You told her when you went out to the kitchen?

Ans. I asked Lino where she was and he answered me that she was in her room.

Q. That is what you mean when you say that she was notified that you were coming, when Lino notified her?

Ans. It was for that same reason that I came back to the parlor again and right at that moment she appeared and came out of her room.

Q. The notice which you have spoken of is the notice which you gave to Lino and he gave to her when you went out to the kitchen?

Ans. No, he could not advise her because there is a hall between and unless he came to the parlor first he could not go there.

Q. Then how did she know you were coming there?

Ans. Because hearing the steps of the people coming because her room adjoins the parlor and she knew, more or less, the hour we were coming.

Q. How did she know the hour that you were coming?

496 Ans. What I said before, that in the afternoon I said to her that we were near completing or terminating the arrangements.

Q. Was it you or Cuadra that told her that that afternoon?

Ans. It was myself.

Q. You are sure it was not Cuadra?

Ans. I don't know whether Cuadra notified her or not; I did.

Q. You said yesterday that you called upon Doña Maria the following day after the signing of the contract that night and that she seemed to be very much pleased with the matter.

Ans. Yes, sir; she was satisfied.

Q. How many times did you see her the following day after signing the contract?

Ans. I saw her only once.

Q. Was anybody with you upon this occasion?

Ans. No, sir.

Q. You went there alone?

Ans. Yes, sir; that visit was very early. I also remember that the 17th or the 18th, after that private agreement was consummated, we agreed on that transaction that it should immediately be converted into a public document, but the Notary Public was at Vieques at the time. After he came back, I think it was on the 18th that he came back, my wife and Doña Manuela went to sign the instrument.

Q. Wait a minute, you were not asked anything about that. Will you kindly confine yourself to the questions and make your explanations afterwards? Did you accompany anybody to the house of Doña Maria to request her or induce her to sign the public document?

Ans. I went with Mr. Cuadra, I don't know whether it was on the 17th or 18th. Mr. Cuadra went in and I remained outside because I was talking outside with some friend. I don't remember who it was. He said to Mrs. Maria that Manuela and Pepita were waiting for her at the Notary's office and it was then that she said she was tired of giving her signature.

Q. You remained out on the sidewalk?

Ans. Yes, sir; I remained on the sidewalk.

Q. And he went in the house?

Ans. Yes, sir; but only a moment; she seemed to be angry.

Q. You stopped to talk with a friend on the sidewalk?

Ans. Yes, sir.

Q. Who was that friend?

Ans. I don't remember; it was such a long time since.

Q. Did you carry on a conversation with your friend while Cuadra was in the house?

497 Ans. Cuadra simply went inside and asked her that; that Doña Maria and somebody else were waiting for her at the Notary's office, and upon her telling him that she did not want to sign, he went out.

Q. Don't you know that I didn't ask you about anything that happened inside, in that last question? Don't you know that I simply asked you if you engaged in a conversation with your friend outside?

Ans. Yes, sir.

Q. Why don't you answer that question?

Ans. I have replied to it.

Q. What was your answer?

Ans. That that was so; that I was talking to a friend outside while he went in and he came out after a short while.

Q. How long did you stand there talking to your friend?

Ans. It was a question of three or four minutes only. Imagine that my wife and Mrs. Manuela were waiting at the Notary's office, and immediately after they got there at the Notary's office, the first thing they did was to send word to Doña Maria.

Q. Who was it that told you to go to the house of Doña Maria to get her to sign that document?

Ans. It was not requested; it was in pursuance of the provisions of a contract signed the day before.

Q. So you went ther- of your own accord?

Ans. When?

Q. When you went there with Cuadra.

The COURT: Tell him the Court will reprimand him if he doesn't confine his answer to what is asked him. Mr. Dexter is entitled to a direct answer. He must not volunteer matter.

Q. Now will you answer the question whether you went with Cuadra to Doña Maria to have her sign that public document, of your own accord?

Ans. As it was agreed.

The COURT: Tell him he can answer that yes or no.

Ans. Yes, of my own volition; not at the request of anybody.

Q. You wanted to go with Cuadra to get her to go to the Notary's office to sign that document; to see her sign that document?

Ans. Yes, sir.

Q. And when she refused to sign it you were somewhat disappointed, weren't you? Somewhat annoyed about it?

Ans. Yes, sir; it is natural so.

Q. And your wife was also annoyed and disappointed about it?

Ans. Yes, sir.

498 Q. And Doña Manuela was annoyed and disappointed about it?

Ans. I don't know about Doña Manuela.

Q. How about Mr. Landron?

Ans. He also felt peculiar or strange because she consented to sign that document and her refusal to sign was a surprise to him.

Q. When did Mr. Landron leave Humacao after the signing of that document; the same night or the following day?

Ans. I don't remember that.

Q. Did you have any conversation with Mr. Landron, after the signing of that private contract and before he left Humacao?

Ans. Yes, sir; we had conversations the same as I have conversations with anybody else.

Q. What did he say about closing up this deal and having a public document drawn by the Notary; what instructions did he leave there for you or Mr. Cuadra?

Ans. The instructions that he left were these; that as soon as Mrs. Maria would sign, Mrs. Manuela would sign. More than that, there was an instrument which was signed by Mrs. Maria and Petronila and inasmuch as Mr. Landron was not in Humacao, Mrs. Manuela might not want to sign unless she saw the signature of Mr. Landron first.

Q. Did you write to Mr. Landron after that to inform him of Doña Maria's refusal?

Ans. I don't remember; I have in my possession hundreds of letters from Mr. Landron. We had mutual correspondence and a very long one.

Q. Is it not a fact that you immediately wrote to Mr. Landron advising him of her refusal to sign and offering your services to bring her around and that you would eventually bring her around?

Ans. No, sir.

Q. You never wrote such a letter?

Ans. I don't remember as to that, but if you can show me a letter.
Q. Answer yes or no.
Ans. I don't remember.
Q. Did you keep a copy book at that time of all your letters?
Ans. No, sir; I do not copy my letters.
Q. What was the name of this property which you say you bought or your wife bought from Palmer?
Ans. "Cercado*m* Torres"; a portion of it is "Cercado Torres" and a portion of another estate which I don't remember.
Q. How many acres compose it?
Ans. 100 acres.
Q. Wh*ta* kind of land is it?
Ans. Low land.
499 Q. What is it adapted for; what kind of cultivation?
Ans. I have it now leased to Mr. Preston for sugar cane.
Q. What is the rental value?
—. ——.
Q. Before Palmer owned that property, who owned it?
Ans. That was assigned to Mrs. Manuela Gutman in pursuance to a transaction that we carried out.
Q. That was part of the estate left by José Maria Rios y Berrios?
Ans. I believe so.
Q. And was the subject of the claims of the daughters, your wife and Doña Maria, for many years?
Ans. Yes, sir.
Q. You knew the property very well?
Ans. Yes, sir; I know the property itself, but I don't know the boundaries.
Q. Of what other property is this a portion?
Ans. I don't know.
Q. That property was the tract or parcel of ground known as "Cercado Torres," also called "Maizalez"?
Ans. I believe so; I am not certain; I am not very familiar with it.
Q. At the time you purchased it, or your wife, it was first class land, wasn't it?
Ans. Yes, but there is another thing connected with that; there is a portion of that property which is very humid soil and I am paying now $40 taxes for the 100 acres.
Q. Did you know at the time this property was deeded by Palmer to your wife, that that was one of several other properties which had been sold to Palmer by Burset?
Ans. I purchased that "finca" from Palmer; I don't know anything else about it.
Q. Who purchased it, you or your wife?
Ans. My wife; I paid the money in the name of my wife.
Q. Didn't you know when that property had been transferred by Doña Manuela to Victor Burset, her son-in-law?
Ans. I don't know that because I was at that time in Humacao and Mrs. Manuela was living here in San Juan.
Q. When your wife bought this property or you bought it for her,

didn't you know that Palmer, who sold to you or your wife, had acquired that property together with six properties more from Victor Burset and these other six properties being part of the estate of Doña Maria's father?

Ans. I say already that I don't know anything. After the transaction was arrived at, that deed was signed by Manuela.

500 Q. You never asked the Registrar of Property to see whether the title was good or not or asked an attorney?

Ans. I didn't have to see it because I knew that the purchase was well made.

Q. Well you had some knowledge how it was made then?

Ans. Yes, sir; I knew that that "finca" was once José Rios', and in pursuance of the settlement that we arrived at, that "finca" was assigned exclusively to Doña Manuela. She could sell it to anybody she pleased. I found out that she sold it at San Juan and I also found out that Palmer bought that "finca" and I bought from him 100 acres.

Q. At the time of this purchase by you or your wife, did you know Victor Burset?

Ans. I knew him long before.

Q. You knew that he was a son-in-law of Doña Manuela?

Ans. Yes, sir.

Q. Did you know him for a rich man?

Ans. I don't know because I don't go into the affairs of people.

Q. Did you know also that the son of Santiago Palmer married a daughter of Doña Manuela?

Ans. Yes, sir; I knew that too.

Q. Do you recollect the date of that transfer?

Ans. No, sir; I don't remember.

Q. The 21st of November, 1902?

Ans. What?

Q. The transfer to your wife.

Ans. You mean the deed; that was done at Humacao about that time.

Q. Now Mr. Noya, isn't it a fact that just prior to that time you threatened to bring a suit against Doña Manuela, and your wife did bring suit against her to compel her to recognize your wife's interests in all this property?

Ans. No, sir; what I demanded was the compliance of fulfillment of the settlement that we arrived at. I sued Doña Manuela to compel her to carry out the settlement made with us.

Q. This was just a short time before this deed was made, wasn't it?

Ans. I don't remember.

Q. That was in 1902, wasn't it?

Ans. I said already that I don't remember. I don't want to state a falsehood.

Q. Manuela refused to carry out the agreement that was made at the house of Doña Maria that night?

Ans. I think she consented and placed the blame on Doña Maria.

501 Q. You dismissed that suit that you brought against Doña Manuela?

Ans. Which suit?

Q. The suit which you brought to compel her to recognize your wife's interests.

Ans. That was joined to two other lawsuits.

Q. Isn't it a fact that since the date of this deed neither you nor your wife have prosecuted that suit nor taken any steps in it against Manuela?

Ans. I said to you that we are now in the Court of Humacao. All those facts are known by my attorney.

Q. Wouldn't you know whether any steps were taken in that matter after this deed was made?

Ans. I said to you already that I myself don't remember. My attorney knows all about that. You can ask him.

Q. Who was your attorney?

Ans. José Maria Cuadra.

Q. He was then and has been representing yours and your wife's interests up to this time?

Ans. Yes, sir; and he is still so.

(By the COURT:)

Q. He says he doesn't know what his attorney did. Didn't he have any conference with him as to what he did?

Ans. No, sir; because the facts are these. For instance, I sued my mother-in-law to force her to comply with a certain transaction or settlement and on the occasion she consented, stating that she did not deliver up the property on account of the fault of Mrs. Maria.

Q. He said he didn't know what was being done by that suit that was pending. Does he mean to convey the idea that he never spoke to his attorney about it since and doesn't know from his attorney?

Ans. Judge, I have been living in San Juan for three months and my attorney is at Humacao.

Q. We don't care where he lives or anything. What I would like to know is, if he has a suit pending and doesn't know anything from his attorney what was done about it since the suit was brought.

Ans. But inasmuch as I gave him full instructions to act in that matter as he thought fit, and then the matter has been very much delayed in the Humacao Court.

Q. I am trying to find out whether the attorney ever reported whether he was carrying out those instructions?

Ans. Yes, sir; he has.

Q. He has reported to him?

Ans. Yes, but it is some time since he gave me that information. He has not given me any more because we have not had any matters for a long time. Another thing, Judge, I have several lawsuits pending at Humacao and I am subpœnaed every now and then, and one suit alone has been stopped about 19 times on account of the petitions.

502 (By Mr. DEXTER:)

Q. Did you ever instruct your attorney to bring a suit against Doña Maria to compel her to carry out that agreement that was made that night and put it into a public document?

Ans. Yes, sir; in the District Court, and I won the case.

Q. You did bring a suit against Doña Maria to compel the performance of that private agreement?

Ans. Not to compel her to comply with the agreement, but to give me one-half of the property she had.

Q. Neither you nor your wife brought a suit against Doña Maria to compel the specific performance of that contract that was made that night and to put it into a public document?

Ans. Yes, sir; and the court ordered that Mrs. Maria give me one-half of the property.

Q. You mean to say that you brought a suit against her to give you half of the property or did you bring suit against her to compel the specific performance of that contract that was made that night?

Ans. To deliver to me the property in pursuance of the agreement that was made, and the court ordered that I be put in possession.

(By the COURT:)

Q. Is that the only suit that he brought against her about this settlement?

Ans. I still have more, because "Culo Prieto" and "Mulas" are registered in the name of Mrs. Maria and Pertonila Rios, and since June, 1902, Mrs. Maria has not paid a cent of the rentals to my wife, Mrs. Petronila. She has kept it all and I have now a suit pending to compel the payment.

(By Mr. DEXTER:)

Q. Have you or your wife ever paid Doña Maria her half or any portion of the rents of this property that was deeded to your wife, the 100 acres?

Ans. What 100 acres do you refer to?

Q. The 100 acres that were sold to your wife by Petronila.

Ans. I purchased that; that is my own private property.

Q. I am just asking you whether, as a matter of fact, you have yourself or anyone given Doña Maria half of the rents of that property.

Ans. Of the 100 acres at Naguabo?

Q. Yes.

Ans. No. Why should I?

Q. Doña Manuela during her lifetime never brought suit against Maria to compel the specific performance of that private contract did he?

Ans. I don't know anything about that.

Q. Do you know whether her children of the second marriage ever brought suit to compel it or not?

Ans. I don't know that either. It was only after the marriage that I took an interest in the affairs.

503 (By the COURT:)

Q. When were you married?

Ans. In September, '98.

(By Mr. DEXTER:)

Q. What is your occupation, Mr. Noya?
Ans. Agriculturist; I am going to plant cane.
Q. What property do you cultivate besides this "Cercado Torres"?
Ans. None.
Q. Has that been your occupation ever since you got married?
Ans. Yes, sir.
Q. No other?
Ans. Before that I was a clerk in the house of Mr. Antonio Roig.
Q. And after you became married you became an agriculturist?
Ans. Yes, sir.
Q. Cultivating the property of your wife?
Ans. Yes, sir; settling or arranging her affairs.
Q. You and your wife are well acquainted with the Bustelo children, aren't you? The children of Doña Manuela by her second marriage?
Ans. At first when we sued Manuela we were in bad terms, but after everything was settled and the private agreement or settlement was arrived at, ever since that we have been friends.
Q. You have lived together in Humacao; have been neighbors with the Bustelos; lived in Humacao in the same town?
Ans. Yes, sir.
Q. And since you became on friendly terms you have been very friendly with each other, haven't you?
Ans. Yes, sir; but they don't live in my house. They live at the house of her sister, Mrs. Carolina. The proof of that is that I am now living at Santurce and one of them is living at the Union Hotel.
Q. You have been taking an active part in helping the defendants in this case, haven't you?
Ans. No, sir; I don't have to help anybody.
Q. I am asking you whether it is a fact that you have been assisting. I am not asking you whether you have to or not.
Ans. No, sir; if I wanted to help, that would be more convenient for my wife because she would get more out of it because my wife is a sister to Mrs. Maria and she would get one-half of what she is claiming. And I am coming here to tell the truth because my wife has always been a good daughter, and in order to bring everything to an end, it was then that she joined Mrs. Maria to come to that agreement.
Q. Did you recommend to your wife to renounce her share of the inheritance?
Ans. She did it voluntarily.
504 Q. As a good daughter to her mother?
Ans. As a good daughter, then in addition to that, she noticed that the attorneys were taking away a good bit of that estate, and both myself and my wife preferred to have everything settled so everything would be in harmony.
Q. This fear that you just expressed of the attorneys getting away with the whole estate, did that have anything to do with the mort-

gage that was afterwards given to Landron, a brother of one of the attorneys?

Ans. No, I didn't refer to that. I referred to twenty years back. All the lawyers have been doing the same.

Mr. DEXTER: That is all.

Redirect examination:

Q. At the time of the settlement, at the time you advised your wife about signing, did you think that by that settlement your wife was getting a good settlement or a bad one?

Ans. She was not getting a bad settlement; she felt satisfied; she felt pleased.

Q. I was asking you for your opinion. Was that your opinion or hers?

Ans. But as the capital belonged to her, I gave her instructions and she felt satisfied with that.

Q. You mean you let her have her own way, is that it?

Ans. Yes, sir.

Q. At the time you bought these 100 acres in 1902, what was the land used for then?

Ans. It was devoted to pasture.

Q. Had any sugar cane ever been raised on it, to your knowledge?

Ans. This is the first time that I have leased the property to Mr. Preston.

Q. You mean that is the first time that cane has been planted on it?

Ans. Yes, sir.

Q. Was there any cane anywhere in that region at that time?

Ans. No, sir; right opposite or right across there is a plantation planted in cane. That is leased by Mr. Preston too.

Q. I mean in 1902. What plantation is that you refer to?

Ans. Mr. Preston's plantation.

Q. How much cane did they raise on that?

Ans. I cannot tell you.

Q. Was that the only place in that valley around there that they raised cane?

Ans. Yes, sir

505 Q. The rest of it was low land devoted to pasture, was it?

Ans. Yes, sir.

Q. State, if you know, what was the reasonable value of pasture lands in that vicinity.

Ans. That depends in the first place on the condition of the land itself. It ranged from $30 to $35 or $40.

Q. Passing back to the day that the transaction or the settlement was made, you stated on cross examination that before Mr. Landron came to Humacao, you had begun talking over the basis,—"asunto" was the word used—with Doña Maria. What did you mean by this "asunto;" what basis?

Ans. To our affair; our matter concerning which we appointed an attorney. I will explain it to you. When I sued Doña Manuela to compel her to deliver the property to my wife, Mrs. Maria was

then under the same conditions as my wife, and Mrs. Maria learned that I sued Mrs. Manuela, my mother-in-law; then she sent for me and said to me that inasmuch as the capital belonged to the two sisters, that it would be best to join and in that way they would pay their attorney instead of engaging an attorney separately.

Q. Up to the time of the arrival of Mr. Landron, had there been any talk between you and Doña Maria about a settlement?

Ans. What? I used to go to her every moment.

Q. Listen to the question and answer it (Question was read by the Stenographer). I am asking you, before Landron arrived.

Ans. No.

Q. Determine what reason was there whereby you and these other gentlemen that afternoon went to the three houses in the order of your wife first, Doña Manuela second and Doña Maria third.

Ans. That was the settlement made to bring everything to an end.

Q. That is not within a thousand miles of the question. Why did you get the signatures in the order of your wife first, Doña Manuela second and Doña Maria third?

Ans. I will explain to you that. In the street where I live is the warehouse of Mr. Argueso, which is very near my house. We went first to our house which is the nearest, and after we went to our house we went to Mrs. Manuela's, which house is much nearer than Mrs. Maria's, who lived very far away.

Mr. PETTINGILL: That is all.

(By Mr. DEXTER:)

Q. In the deed which was executed by Palmer, Palmer appeared by attorney in fact Don Emilio Cuadra?

Ans. Yes, sir.

Q. He is the brother of Mr. Cuadra, the lawyer, is he not?

Ans. Yes, sir; he is the Mayor of Humacao.

506 (By the COURT:)

Q. He has stated that he has hundreds of letters with this man Landron. State in what capacity. Was this man ever his attorney?

Ans. Mr. Landron had correspondence with me on account of several affairs.

Q. Was he ever your attorney in any transaction?

Ans. In the transaction in which he was attorney for Doña Manuela; he was not my attorney.

Q. I am asking him if he ever had correspondence with him before this settlement in legal matters, before he came to Humacao.

Ans. No.

Q. When was it that he had the hundreds of letters that he said? Who introduced Mr. Landron to the widow Manuela Gutman.

Ans. At that time I was not on good terms with her.

Q. I am asking him if he knows who introduced him?

Ans. I don't know.

Q. He was there seven days he said?

Ans. Yes, sir.

Q. How soon did you get on good terms with the mother? During those seven days?

Ans. We didn't become friends again.

Q. Did their unfriendliness continue up to the time Landron came there; was it Landron that brought them together? Answer yes or no.

Ans. No, it was not Landron.

Q. Was he on speaking terms with this woman Manuela Gutman up to the time Landron came?

Ans. No, sir.

Q. Who brought him into contact with her to reconcile them; was it the first or second or third of the seven days?

Ans. We have never been in contact with that woman after that transaction because she left Humacao. With her children I used to be on good terms, but not with her.

Q. He made another remark which I wish he would explain, if I have understood him right. He has stated that if Maria wins, his wife wins. He is really here testifying against her.

Ans. She complied with the desires of the family at that time; that is, she consented to the transaction as a good daughter so that all the differences of the family had theretofore should come to an end. The only difference is that Mrs. Maria was all alone. Her husband had already died.

Q. Tell him I don't want a speech. I want to know if he wants to confer the impression to the Court that he is testifying against his wife's interests.

Ans. Our position or the position of my wife is to carry out the terms of that transaction; that is what she agreed she would do.

507 Q. Tell him I was not asking him that. Tell him what I want him to testify, if he knows, is whether he claims that what Maria would recover in this case would inure to the benefit of his wife as much as to Maria.

Ans. Yes, sir; that we are not prejudiced. That is because we have to comply with what we have agreed.

Q. Ask him again if he regards himself as testifying here against his wife's interests and against his own interests.

Ans. Yes, sir; as she herself would testify.

(By Mr. PETTINGILL:)

Q. How do you know that the carrying out of the private agreement, the transaction, was to the prejudice of your wife?

Ans. I don't say that the transaction, the private agreement, should be prejudicial to my wife.

Q. You testified in answer to a question of the Court, that if complainant here, Doña Maria, should win this suit, that her winning would result in the acquirement by your wife of an equal interest, and therefore, as you were testifying to uphold the settlement, your wife's interest would be prejudiced by your testimony. How do you come to that conclusion, how do you know that?

Ans. That is what I said before, that I limited myself to comply with the transaction. What I meant to say to the Judge is this, that really my wife would be prejudiced.

Q. How do you know she was prejudiced? That is what I ask you. You have said that your wife would be prejudiced. Now why?

Ans. As to saying that she would be prejudiced, perhaps I don't understand the question of the Judge.

Q. It doesn't make any difference whether you understand the question of the Judge. You said that in the making of that settlement your wife was prejudiced.

Ans. What I meant to say is this, that she would not pay on her part anything in order to bring about a settlement.

Q. Didn't she think at the time that she was receiving as much as she was giving up?

Ans. Yes, sir.

Q. But you think now that she was prejudiced and didn't get as much as she gave up?

Ans. No, perhaps I explain myself incorrectly.

Q. If you can explain what else you meant by prejudice, I would like to know what it is.

Ans. That is what I say, that my wife at the beginning was willing to give up a little something so everything would come to an end, be concluded. For instance, suppose that she was entitled to 200 she would give 10 acres to Mrs. Manuela and keep only 190.

508 Q. But she got that 190 relieved of all Mrs. Manuela's claims to usufruct and everything else.

Ans. Yes, sir.

(By the COURT:)

Q. Do you understand that the title to the 100 acres of ground that you have a deed for by purchase, is involved in this litigation?

Ans. Yes, sir.

Q. Then ask him, when the Court asked him whether he was really testifying against his own interests, if he understood that that involved the question of this title here?

Ans. No. How could I understand it that way? That is a property I purchased.

Q. But it is involved in this suit.

Ans. Perfectly well, but since I know that I purchased that property.

Q. Tell him we are not trying that question, but tell him I asked if he meant that he was really testifying against his own interests.

Ans. I did not have it in view.

Q. Then he is testifying for his own interests.

Ans. Yes, sir; in defense of my own interests.

Q. Ask him if he or his wife has any indemnity or arrangement with Burset or Palmer, either with that deed or any other deed, either he or his wife, as indemnity for standing by that so-called private agreement.

Ans. No, sir; I purchased that property from Mr. Palmer. That is a property that I purchased from Mr. Palmer.

Q. He has no indemnity or arrangement?

Ans. No, sir.

Q. For testifying against his wife's interests?

Ans. No, sir.

(By Mr. DEXTER:)

Q. In this deed, Mr. Noya, which was made to your wife, there appears copied literally the power of attorney given by Palmer to the brother of Mr. Cuadra, the lawyer, for the purpose of making that deed to your wife.

Ans. Yes, sir.

Q. And it says that he is to make that deed in accordance with private instructions which he gives in writing to the lawyer José Maria Cuadra.

Ans. Yes, sir.

Q. Did you see those instructions or know what they were?

Ans. No, sir.

Q. You have never seen them?

Ans. No, sir.

Q. How did those private instructions come to be given Mr. Cuadra, the attorney of Maria and your wife? What was the character of them?

509 Ans. I said to you that I did not see them, because Mr. Cuadra didn't show me that letter, but I suppose the private part of it is that he told him that I had already given him the money because it was right here in the Capital that I delivered the money.

Q. When was it you delivered the money? Before or after the deed was made?

Ans. Before the deed was made. The deed was made in Humacao.

Q. How long before.

Ans. In May or June; the deed was made in November.

Q. You mean to say that you paid over the money in May or June and didn't ask for a deed until November?

Ans. Yes, sir.

Witness retires.

Witness JOSÉ MARIA CUADRA Recalled.

Direct examination.

(By Mr. DEXTER:)

Q. Do you recollect the deed which was executed by your brother Enilio Cuadra to Petronila Noya on the 21st of November, 1902, before the Notary Aldrey of Humacao?

Ans. I have information concerning that deed, but I don't remember the date.

Q. Do you recollect having received some private instructions from Palmer about the execution of that deed?

Ans. No, sir.

Q. You never received any?

Ans. I don't remember.

Q. Can you say yes or no or that you don't remember?

Ans. Just simply a power of attorney that Palmer gave to my brother Emilio.

Q. (showing witness a document.) This power of attorney speaks of private instructions to you in writing.

Ans. That is what I said, by virtue of the power.

Q. Did you receive any written instructions from Mr. Palmer?

Ans. A letter for Emilio.

Q. Was it addressed to you or Emilio?

Ans. To Mr. Emilio.

Q. Doesn't this call for private written instructions given by Palmer to you, José Maria Cuadra, the lawyer, and not to your brother?

Ans. What it says is that he confided to me thos- instructions for his power of attorney.

510 Q. Doesn't it say there that they were for José Maria Cuadra, the lawyer?

Ans. That is not what the power says. The power says that those private instructions were given to me to deliver to my brother Emilio.

Q. Where are those private instructions? In whose possession are they?

Ans. I gave them to my brother.

Q. Do you know whether they are in existence now?

Ans. No, sir.

Q. Is your brother in the Island?

Ans. Yes, sir; he is in Humacao.

Q. Is he contemplating leaving the Island, going to Europe or the States?

Ans. No, sir.

Q. Have you seen those written instructions since the deed was made or that power was made, and since you turned them over to your brother?

Ans. No, sir.

Q. Do you recollect the contents of them?

Ans. How could I remember them if I did not see them. They were instructions that I gave to my brother from Mr. Palmer.

Q. You had no conference with Mr. Noya or his wife or Mr. Palmer about how this deed should be made?

Ans. No, sir; I don't remember.

Witness retires.

Court adjourns.

511 Hearing Held at Mr. Dexter's Office June 19, 1905.

Stipulation.

Testimony being taken by consent before Arthur J. Harvey, Court Stenographer, no notary or other official to administer oath being present, it is agreed that the testimony of the witness José Toro Rios without the necessity of an oath may have the same effect and consideration as though an oath had been administered.

Witness: JOSÉ TORO RIOS.

Direct examination.

(By Mr. PETTINGILL:)

Q. Where do you live?
Ans. Humacao.
Q. What is your age?
Ans. Thirty-one years.
Q. Your occupation or profession?
Ans. Registrar of Property.
Q. How long have you been Registrar?
Ans. From the American occupation.
Q. Are you acquainted with the properties which formed the estate of José Rios y Berrios at the time of his death?
Ans. Yes, part of them.
Q. Give us an idea of those you are acquainted with.
Ans. I know only those that exist at present as real property.
Q. Give the names of those you are acquainted with.
Ans. There are certain properties within the municipality of Naguabo, one of which is named "Cercado Ramirez," "Rivalta," "Madam Duran," "Islote Quiñones"; others which names I don't know, which number I know to be up to six, and within the same municipality of Naguabo there is another property named "Culo Prieto" which is considered as forming part of the properties within Humacao, and the principal property is named "Las Mulas." There is another property named "Braciles," another named "Lebron" and three or four more without special names.
Q. These last being in Humacao?
Ans. The last all situated in Humacao. I believe them to be seven.
Q. Previous to the year 1900 were any of these properties registered in the Registry?
512 Ans. As of the succession of Don José Rios y Berrios, there was none inscribed.
Q. At what date was the first inscription of those properties made, about?
Ans. It must have been in 1900 from the month of July up to the month of October; between July and October.
Q. Are you the owner of any part of the property that formerly belonged to this succession?

Ans. Yes, sir.

Q. What part?

Ans. I have half of the property named "Braciles," an interest in "Las Mulas" to the extent of 40 cuerdas and another interest in the same "Mulas" to the extent of 303 cuerdas.

Q. You know the complainant in this case, Maria Rios?

Ans. I know her.

Q. Are you related to her?

Ans. She is a cousin of mine and a relative within the fourth degree.

Q. Did you acquire any one of these interests of which you have spoken, from her?

Ans. Not directly.

Q. Explain the circumstances under which you acquired "Braciles."

Ans. The property "Braciles" was sold at public auction by the District Court of Humacao by virtue of certain claims therein presented against Petronila Rios y Gutman, and on the day of the sale I appeared as a bidder and my bid was accepted by the court and adjudication made to me, but I could not take possession of that property until I made a settlement with Doña Maria and she executed to me a deed of partition of property.

513 Q. About what date was that deed of partition made?

Ans. I don't remember exactly, but it was in the month of August, 1904, and the deed was executed before the Notary Aldrey.

Q. As to the 303 cuerdas.

Ans. I acquired it in the same manner as the property "Braciles," that is to say, by having been the highest bidder at the sale before the District Court of Humacao, and in this property, although I am in possession of my participation, no deed has been executed to me.

Q. What do you mean by the statement that you are in possession but the deeds have not yet been executed?

Ans. That having been the highest bidder at the sale, I requested the delivery to me of the property sold, to which request Don Juan Viaz, lawyer for Maria Rios, opposed, and for that reason I had to file a complaint in the District Court of Humacao, which, through its legal proceedings and the date of the trial having been set, my claim was settled in an interview that we had, the lawyer Don Juan Viaz, Mr. Dexter, Mr. Hernandez and I, and there we agreed that with certain conditions the property would be delivered to me, and in fact we have reached the point of the appointment of experts to make up lots to the partition of the parts which might belong to each one and the selection by lot was made and I took what was coming to me and Mr. Noya as representative of his wife delivered to me what belonged to her and we left there what corresponded to Doña Maria, and we agreed to get up a statement before a Notary in order to make the inscriptions in the Registry of Property, and, in spite of my efforts, I have been unable to have that deed executed, and for that reason I said that I had the possession but no deed was executed to me.

514 Q. Mr. Viaz and Mr. Dexter represented whom in these conferences?

Ans. I know Mr. Viaz represented Doña María and Mr. Dexter did not appear as an attorney in that case.

Q. At what time did those negotiations begin?

Mr. DEXTER: The same objection.

Ans. In the month of March.

Q. Of this year?

Ans. Yes, sir; I believe on the 10th.

Q. Have you for a number of years been acquainted with the values of property in the neighborhood of these you have mentioned?

Ans. Yes, sir.

Q. In the year 1902, what, in your opinion, was the value per acre of the "Cercado Ramirez"?

Ans. The greatest value I believe $40.

Q. What kind of land is it?

Ans. The land is a good class.

Q. Up to that year what had it been used for?

Ans. It was dedicated to the raising of cattle.

Q. Was there any land in that vicinity of any greater value than $40 up to that time in 1902?

Ans. The prices of land depend upon the necessity because I might say that I believe that they were not worth more or less. If they were near a factory and instead of being dedicated to the raising of cattle, might be dedicated to the planting of cane.

Q. Was the planting of cane practiced on those neighboring lands before 1902?

Ans. In that land there was never cane planted.

Q. Has the value of land in that vicinity increased or diminished since that time?

Ans. They have increased in value.

Q. For what reason?

Ans. By reason of the organization and installation of two companies which will be dedicated to the making of sugar, one situated very near those lands, probably at less than one kilometer distant, called San Cristobal Sugar Company, and another at a distance of about three kilometers, called the Humacao Sugar Company, and with the erection of these central mills it may be said that all the lands of the valley of Pasto Viejo, Mulas, Naguabo, where the "Cercado Ramirez" is situated, have doubled their value.

Q. When was the first of these centrals started?

Ans. None of this has yet been installed. They are in the period of construction.

Q. When did they begin to plan?

515 Ans. Those centrals are already organized and the two will grind their first crop next year. I may assure that the San Cristobal has at the port of Naguabo a ship with machinery on and the other has at Brooklyn all its machinery ready.

Q. What is the comparative quality of the land of the "Cercado Ramirez" and of "Las Mulas"?

Ans. The "Cercado Ramirez" is of a good class of land and "Las Mulas" has some parts of it of as good quality as the "Cercado Ramirez" and others of inferior quality, so much so that in the last transactions made to divide up the "Mulas" the best portions of that property have been assessed at $60 and the worst portions at $12, it being an assessment for the present time.

Q. The "Islote Quiñones," what was that worth in 1902?

Ans. Approximately the same as "Cercado Ramirez."

Q. And "Madam Duran"?

Ans. About the same.

Q. What kind of boundaries has this "Cercado Ramirez"?

Ans. I don't know them exactly.

Q. Are they boundaries of mountains or rivers, natural or artificial?

Ans. On two sides it has natural boundaries, the river. On the north I also remember its boundary, a property named "Santa Rosa," a property belonging to Mr. Villamil and is leased to Mr. Barreola. That is on the east. On the north, I remember that adjoining that property there was one belonging to Buso and I may say that I know exactly which one is "Cercado Ramirez, but I don't know who are the owners of the adjoining properties.

Q. Is the presence of a river as a boundary an advantage or disadvantage to the land?

Ans. It depends on the nature of floods of the river. If the floods of the river do not carry stones or sand, then it is beneficial because it is supposed to be a fertilizer, but if the river carries with it stones, sand, or the course of the river changes, then the condition is neutralized or at least prejudicial.

Q. What is the condition of this river as to the "Cercado Ramirez"?

Ans. That I don't know.

Q. What as to the presence of the river touching the cost of cultivation of lands surrounding?

Ans. It is much more expensive for the following reason. The cane is a plant that is an absolute enemy of the water and only needs what is sufficient for its life and it being necessary very near the plantation to make a certain number of ditches to make the drainage of the property, at a place such as the location of the "Cercado Ramirez," whether they are beneficial or prejudicial, the
516 floods of the river necessarily must produce a damage to cover up all those ditches, which must be made anew immediately and this means a larger expense.

Mr. PETTINGILL: That is all.

Cross-examination.

(By Mr. DEXTER:)

Q. Señor Rios, you have had some litigation pending for some time against Doña Maria in the courts of the Island have you not?

Ans. Yes, sir.

Q. You are even today in the attitude of a claimant making claims against her, are you not?

Ans. Not judicially.

Q. Well, in other ways?

Ans. Yes, personally.

Q. As a matter of fact, you imagine or believe that you have reason to complain against her, do you not?

Ans. Absolute complaint, no.

Q. Well, any kind of complaint?

Ans. Only that she has refused to execute to me deeds, but, as soon as she executes them, those complaints will disappear.

Q. Are you and Doña Maria on intimate friendly terms?

Ans. Not intimate.

Q. You are her cousin?

Ans. Yes, sir.

Q. You live in the same town that she does?

Ans. Yes, sir.

Q. Have always lived in the same town?

Ans. Yes, sir.

Q. How often have you visited her in the last year, more or less?

Ans. With little frequency.

Q. As a matter of fact, you hold no social intercourse with her?

Ans. I don't visit her only when we have to make a transaction or some business, but in the same position are all the rest of her cousins who don't call on her.

Q. Who are these cousins?

Ans. Doña Josefa Soler y Rios, Don Emilio Rios, Don Ramon Po y Rios and Don Narciso Soler y Rios, with the particularity that the last two have only been in Humacao 15 or 20 days during their life and did not either call upon her.

Q. So that all of her family was occupying an attitude of hostility toward her?

Ans. She against all the family.

Q. According to your opinion; that is your opinion?

Ans. That is my opinion.

517 Q. She is a widow?

Ans. Yes, sir.

Q. Lives alone in Humacao?

Ans. Yes, sir.

Q. And maintains her two or three children?

Ans. They live with her.

Q. And the few times that you say that you have visited her on business have been about your own business, haven't they?

Ans. Yes, for my own business.

Q. In which you were looking out for your own interests?

Ans. Yes, my own interests.

Q. You were not looking out for her interests?

Ans. No, not her own interests.

Q. And the only reason you visited her was on that account?

Ans. There was an occasion in which she called me to look after her interests and it was the day on which her husband died.

Q. And have you been looking out for her interests since that time

shortly after her husband's death when she confided her interests to you?

Ans. No.

Q. Now this property "Cercado Ramirez," in what condition is it today?

Ans. In good condition.

Q. Cultivated by Messrs. Garzot & Fuertes in cane, is it not?

Ans. No, sir.

Q. In what condition is it?

Ans. It is dedicated to pasture.

Q. No part of it in cane?

Ans. There is no part planted with cane.

Q. Then do you want to rectify now and say that some part of it is planted in cane?

Ans. I don't know whether there is part of it planted with cane, but I know that the main part is not planted with cane.

Q. Is that land good for a cane plantation?

Ans. I consider it good.

Q. You said a moment ago in your direct examination that it was the best quality of land, did you not?

Ans. That it was a good class of land. I used the word better when I referred to the others.

Q. What is the best quality of cane land worth in Porto Rico in that locality to day?

Ans. $70.

Q. In your judgment is that the best price which the best cane lands bring today in that vicinity?

518 Ans. There might be some that would bring a larger price, it depending upon the location of those lands. I know there are some lands which are worth $25 have just been purchased at $120 in a tract no larger than 20 cuerdas to erect thereon a cane factory.

Q. When you speak of the best quality of cane lands, doesn't that mean the best quality of cane lands whether it be in Guanica, Mayaguez, Arecibo or Naguabo or whatever part of the Island?

Ans. No, sir; I only refer to the valleys of "Mulas" in Naguabo.

Q. Do you desire to testify that the best quality of cane lands in that locality are not the best quality of cane lands in Porto Rico and are of an inferior quality?

Ans. They are all inferior to others in Porto Rico, and I base my opinion on the fact that in Central Aguirre, in certain portions of Mr. Cabrera's property and in portions of Santa Isabel, Coamo and Ponce the canes, according to reports of gentlemen of that Company yield an average from 1200 to 1400 quintals of cane per cuerda, and I don't know of any cuerda of cane planted in Humacao, Mulas or Naguabo which has reached the figure of 1100, there the good land being of an average of 600, and this makes me believe that these are worse than the others.

Q. Then believing as you do, you would recommend to prospective investors in Porto Rico to keep away from Naguabo, wouldn't you?

Ans. No, I would not.

Q. Although you believe that they are inferior to other parts of the Island?

Ans. Although I believe that, because less price would be paid for that.

Q. You have been able to induce some people to invest in that locality, haven't you?

Ans. Yes, sir; more than ten.

Q. You didn't tell them that kind of a story, did you?

Ans. Not all of it has been said.

Q. Has there been any increase or impulse to the cultivation of sugar cane in this Island in recent years?

Ans. Yes, in the last year, according to statistics, more than 60%.

Q. To what is that due?

Ans. To the high prices.

Q. When did those high prices begin?

Ans. From last year.

Q. Did the introduction of sugar into the United States free of duty have anything to do with that increase?

519 Ans. Yes, it has contributed. Sugars from Porto Rico have a privilege upon all the sugars of the world except Cuba, of $1.69 per each 100 lbs. of sugar; so much so that when we sell our sugar at $3.00 they sell theirs at $1.31.

Q. That condition has been true at least so far as the general increase of price since the introduction of sugar into the United States free of duty, has it not?

Ans. Not absolutely; principally it is due to the Convention at Brussels, at which it was agreed to take away the premiums upon foreign sugar and resulting in a reduction of sugar in those countries. That has more influence in the increase than the non-payment of duties in the United States.

Q. Would the increase of cultivation of sugar in Porto Rico, and particularly the development that you spoke about in Naguabo, have taken place if there had been no change in the duties or reduction of duties into the United States?

Ans. I don't believe it would have taken that impulse.

Q. Is it not a fact that Porto Rican sugar was admitted free of duty into the United States since the 4th of July, 1901?

Ans. They were always admitted free of duty because prior to that time when it was thought that duties were paid thereon, to every merchant who made the payment under protest the Government of the United States has returned the money, and the rest of that money I believe constitutes a trust fund of Porto Rico.

Q. They did pay duties up to the 4th of July, 1901; they were collected in the custom house of the United States?

Ans. Yes, sir.

Q. And from that time there has been a general impulse throughout the Island in the increased cultivation of sugar; is it not a fact?

Ans. Yes, sir.

Q. Are you associated with Garzot & Fuertes in any business relations?

Ans. No, sir.

Q. On very friendly terms?

Ans. I know Mr. Garzot; Mr. Fuertes I believe to be a good friend of mine.

Q. With respect to the other defendants, are you on friendly or business terms with them?

Ans. I don't know who are the other defendants.

Q. Do you know Doña Petronila Rios?

Ans. As much as Doña Maria; I don't call upon her.

Mr. DEXTER: That is all.

520 Redirect examination.

(By Mr. PETTINGILL:)

Q. This impulse in the sugar industry that you have spoken of, did it come into existence suddenly or gradually?

Ans. It has come gradually but the greatest impulse in the increase was last year and this year even more, and I believe next year will be more.

Q. When was the Convention at Brussels; in what year?

Ans. I believe it was held last year. I don't know exactly when it was held, but I know that the results were seen from the month of October of 1904.

Q. Are there any other parties in possession of portions of "Las Mulas" besides yourself?

Ans. No, sir. In the capacity of owners, no; of lessees, yes.

Q. Who are the lessees in "Las Mulas"?

Ans. Perfecto Rios, Emilio Faur, José Raudan and Messrs. Garzot & Fuertes in the part of "Culo Prieto."

Q. How long have they been lessees there?

Ans. Over a year.

Q. And from whom do they rent?

Ans. Doña Maria.

Q. Rios?

A. Rios.

521 *Certificate of Stenographer.*

I, Arthur J. Harvey, Official Stenographer of the District Court of the United States for Porto Rico, hereby certify that the foregoing transcript of testimony, objections made to same by Counsel and rulings thereon by the Court, in the case of Maria Rios de Rubio—*versus*—Victor Burset *et al.*, consisting of two hundred and fifty typewritten pages, is a true and correct copy of same, reported verbatim by me upon the trial thereof.

ARTHUR J. HARVEY,
Stenographer of the District Court of the United States for Porto Rico.

522 In the District Court of the United States for Porto Rico.

MARIA RIOS
v.
VICTOR BURSET ET AL.

Order Appointing Examiner for the Taking and Conclusion of the Testimony Herein, and Fixing the Time for the Taking of Such Testimony.

Now, on this nineteenth day of June, 1905, the parties hereto appeared in open court, complainant by her solicitor F. H. Dexter, and Willis Sweet, Esq., of counsel, defendants by N. B. K. Pettingill and Juan Hernandez Lopez; and it appearing to the court that this cause has been partially heard orally in open court and that it has been continued by the court from time to time because of its inability to finish the hearing of the testimony herein, and because of the early departure of the Judge of this Court from the island upon his summer vacation, the following order is made by consent of the parties hereto represented by their respective solicitors, as aforesaid:

1. Chas. H. Magee is hereby appointed Examiner, with the usual powers of Examiners in federal courts, for the purpose of taking the remainder of the testimony in this cause.

Such Examiner may take such testimony in the form of question and answer, and shall conduct the examination in the same
523 manner as if the same were being conducted before the court, but all objections to the introduction or admission of testimony shall be only noted by him and shall be subsequently passed upon by the court.

2nd. The defendants herein are allowed until July 12th, 1905 to finish the taking of all testimony which they may or can offer in this cause, and complainant shall have until the 25th of July to submit all the testimony which she or her solicitors may desire to offer in rebuttal.

3rd. Upon the return to this court of the deposition of Manuel Argueso, heretofore taken by defendants, the same shall be attached to the testimony so to be taken by the Examiner, but subject, however, to the rights of complainant to file objections to such deposition at any time within ten days after the filing thereof by clerk of the court.

4th. Immediately upon the termination of the taking of all the testimony herein and not later than August first, 1905, the clerk of the court will forward to the judge thereof the testimony so to be taken by the Examiner, the deposition of the witness Manuel Argueso, and the objections, if any, of complainant thereto.

(Signed) CHAS. F. McKENNA, *Judge.*

524 MARIA RIOS
vs.
VICTOR BURSET ET AL.

Report of the Examiner.

To the Honorable Charles F. McKenna, Judge of the District Court of the United States for the District of Porto Rico:

Pursuant to an order made and entered in the above entitled cause on the nineteenth day of June, 1905, a certified copy of which is hereto attached, I have the honor to submit report as follows:

(1) The defendants herein produced all of their testimony prior to the 12th day of July, 1905, and the complainant, in rebuttal, produced all of her testimony prior to the 25th of July, 1905, in compliance with the terms of said order.

(2) Your Examiner has taken all of such testimony in the form of question and answer, conducting the examination in the same manner as if it were being conducted before the court, noting all objections to the introduction or admission of testimony.

525 (3) The deposition of Manuel Argueso, referred to in the order appointing your Examiner, was received and opened by me, reference to which will be found in the record herewith returned.

(4) The taking of the testimony herein was begun in the city of San Juan, continued in the city of Humacao, and concluded in San Juan on the seventeenth of July, 1905, all of which is embodied in the record hereto attached consisting of three hundred and six (306) typewritten pages.

(5) Owing to the great length of the testimony and the fact that the same was not concluded until July 17th, 1905, it was agreed between counsel for complainant and defendants respectively that the time fixed in the above mentioned order for forwarding the same to Your Honor should be extended to September first, 1905, in order to enable your Examiner to typewrite said record, together with a large amount of exhibits, translations, etc.

(6) For services rendered in this cause, attending the hearings, taking in shorthand and transcribing the record herewith returned, your Examiner prays that he be allowed the sum of five hundred dollars ($500).

Respectfully submitted,
(Signed) CHAS. H. MAGEE, *Examiner.*

526 In the District Court of the United States for Porto Rico, Sitting at San Juan. In Equity.

MARIA RIOS DE RUBIO
versus
VICTOR BURSET ET AL.

Testimony Taken Before Chas. H. Magee, Special Examiner, Heretofore Appointed by the Above-named Court.

SAN JUAN, P. R., *July 7th*, 1905,—10 o'clock a. m.

The witness ARTURO GALLARDO, called on behalf of the defendants, having been duly sworn, deposed as follows:

Interpreted.

Direct examination by Mr. PETTINGILL:

Q. What is your name?
A. Arturo Gallard.
Q. Where do you live?
A. At Naguabo.
Q. How long have you lived there?
A. Forty years.
Q. What is your business?
A. Merchant and property owner.

527 Q. Have you property in the Naguabo jurisdiction—that is, real property?
A. Yes sir.
Q. How long have you owned real estate in that district?
A. Nine years.
Q. Do you know the property of about three hundred and fifty acres that is called "Cercado Ramirez"?
A. That property bounds with another that I have leased for a number of years.
Q. Are you well acquainted with it?
A. Yes, I am an abutting owner of the same.
Q. Did you know its condition in 1901-1902?
A. Just as it is at present, yes; devoted to cattle raising—pasture.
Q. Were you familiar with the value of lands in that vicinity in those years, 1901-1902?
A. I know them, because at that time I leased a property belonging to the widow of Capó, which is the property on which I hold a lease, and it bounds with the other property in question; it measures sixty acres and I have it lease- for two hundred and fifty dollars a year.
Q. In your opinion—basing your opinion upon your knowledge of the value of lands in that vicinity in 1902—what was the value of this property known as "Cercado de Ramirez?"
A. At that time, owing to the decrease in the market price of cattle, and the fact that the lands could not be devoted to sugar cane,

I would put the value at from forty to fifty dollars per acre at the most; it depends on the necessity of the seller, but an average of forty to fifty dollars.

528 Q. You say it could not be devoted to cane in 1902; why?

A. Certain portions of it cannot be devoted to sugar cane for the reason that it is flooded by the river; my property is in the highest part of the town and it suffers from floods, so those lands which are lower would suffer most.

Q. Are you acquainted with other properties in that vicinity, known as "Islote" or "Islote Rivalta" and "Madam Duran?"

A. Yes, sir; both.

Q. And "Los Puentes?"

A. Yes, sir; "Los Puentes" belonging to Burzó.

Q. And the "Cercado de Torres?"

A. Also.

Q. And the "Cercado de Maldonado?"

A. Yes, that property is opposite my own property; it is divided only by the river.

Q. And the "Islote Quiñones?"

A. Yes, that is also abutting my own property.

Q. What, in 1902, were the values of those lands?

A. As I said before, that is a lot of ground almost similar; some parts of it are much better for the reason that they are higher, and the others, on account of being near the river, are not so valuable, as sugar cane cannot be planted and they are only fit for cattle; I give this opinion for the reason that my own properties on the other side of the river I am unable to plant cane on for the reason that all the ditches and everything is destroyed by the floods. My

529 own property, which is on the other side of the river, and which is a little higher than the other adjoining property cannot be planted in cane for the reason stated.

Q. What proportion of the "Cercado Ramirez" is subject to these floods from the river?

A. The "Cercado Ramirez"—almost the whole of it, for the reason that it is crossed by the river; the river crosses it right in the centre; that is, of course, when the flood is of importance, when it is a small one the case doesn't apply.

Q. Is any part of the "Cercada Ramirez" much less valuable than the balance?

A. That portion of it which is adjoining the sea, which is mangroves land and is almost always under water.

Q. Of how many acres does that part consist?

A. I cannot tell you the accurate figure but approximately forty to fifty acres; an average from forty to fifty.

Q. Is this land to-day worth more or less than in 1902?

A. To-day I believe that they are worth more for the reason that the property that I have now leased their owners are asking twice as much this time for the renewal of the lease on account of a sugar central that is being erected in the neighborhood.

Cross-examination by Mr. HERNANDEZ:

Q. How many acres of land do you own in Naguabo?
A. 183 cuerdas.
Q. To what are they dedicated?
A. Pasture, cattle raising.
Q. At present?
A. Yes, sir.
530 Q. To what were they dedicated in 1901-1902?
A. The same, cattle raising; I had them devoted to pasture for nine years,—ever since I bought it, nine or ten years.
Q. That is the only property you own, is it?
A. Those are the only ones that belong to me; the other is leased.
Q. What is the name of the plantation which you own?
A. "La Casiana." I found it with that name and I left it with that name.
Q. Does the finca bound the "Cercado Ramirez?"
A. No.
Q. How far is it from the "Cercado Ramirez?"
A. Almost at the extreme end of the finca of nine hundred acres; it bounds with "Islote Quiñones."
Q. So your property is separated from the "Cercado Ramirez" by an extension of land of nine hundred acres?
A. Not so much; I know there are not nine hundred acres; but after that there is the "Cercado Torres."
Q. Well, how many acres do you know separate your land from the "Cercado Ramirez?"
A. Seven hundred or eight hundred; I couldn't give you the exact figures, because after "Islote Quiñones" there is still another further down.
Q. How long does it take to get to the "Cercado Ramirez" from your property on foot?
A. I never travelled that distance on foot, always on horseback.
Q. How long does it take at a regular gait?
A. Twenty minutes.
531 Q. In what direction is your property located?
A. To the west; "Ramirez" is on the east; mine is on the west and the "Ramirez" is on the east.
Q. Your property is nearer the interior or further from the beach than the "Cercado Ramirez?"
A. Of course; my property bounds with "Las Mulas."
Q. And your property is high land, is it not?
A. The hills which divide the town of Naguabo and Humacao is the beginning of one of the boundary lines of my property, and then it goes descending down to the river which separates it from the "Islote Quiñones."
Q. So your property is located on a hillside?
A. Yes, my land is composed of hill land, medium land and low land.
Q. How many acres of low land do you own?
A. In my declaration for the purpose of taxation I have declared one hundred acres of low land.

Q. What value did you put on those one hundred acres, per acre?
A. I don't remember; I know the value put to the estate now is over eight thousand dollars.
Q. What is the value put upon the part of the low land, per acre?
A. Fifty dollars per acre.
Q. In what year?
A. 1902-1903; but the appraisement was raised—increased.
Q. Isn't it a fact that the "Cercado Ramirez" is worth more per acre than your low land?

532 A. I don't believe that the "Cercado Ramirez" is worth more than mine; the only difference between the two properties is that the "Cercado Ramirez" is nearest to the town; that is the only advantage it has; as to the class of land it is the same.

Q. Isn't it a fact that the proximity of a plantation to a town increases its value over those that are far from the town?
A. That is why the "Cercado Ramirez" may be worth more than mine.
Q. Then if your property was worth fifty dollars per acre—you declared it at fifty dollars per acre—the "Cercado Ramirez" is worth more than fifty dollars per acre?
A. In the appraisement or assessment of property of a certain jurisdiction the value is put according to the use to which the property may be put, whether near the town or far from the town; the location is not considered, but the quality and uses to which devoted.
A. I do not believe that it would be worth more.
Q. Didn't you testify that the proximity of a plantation to a town increases its value over plantations that are distant from the town? What is the increase in the value of the "Cercado Ramirez" over your plantation by reason of its proximity to the town?
A. I do not see any increase; I wouldn't exchange my low land for the "Cercado Ramirez."

533 Q. That is not the question. You must admit or deny that the proximity of a plantation to a town increases or decreases its value over those which are far away from the town?

A. There are people who give a greater value to a property located nearer the town than those not so situated, but that depends on the conditions of the property; where the greater portion of it is under water like the "Cercado Ramirez" the case is not applicable, and for that reason I would not exchange my land for that of the "Cercado Ramirez."
Q. But the fact that you wouldn't exchange your property for the "Cercado Ramirez" is not a proper criterion for the value of the "Cercado Ramirez;" you must go by the value of the land itself. You have testified that the quality of your land is the same as the quality of the "Cercado Ramirez." Now is the value of the "Cercado Ramirez" increased by reason of this proximity to the town or not?
A. The price increases for the reason that the lands are nearer the town, but it decreases for the reason that a portion of it is under water. If it were not for the fact that it is nearer the town it would

be worth twenty-five to thirty per cent. less than my own property; the fact that it is near to the town is what gives the value to it.

Q. Is it not a fact that the "Cercado Ramirez" is all sugar land?

A. No, sir; part of it.

Q. How many acres of it can be planted with cane?

A. I couldn't give you a definite answer as to that for the reason that I know it simply by going through it in connection with
534 the cattle business; my rented property, which is higher up, has been lately flooded, and I had to spend twice as much on it on acount of having been compelled to clear up the ditches and repair the damage done by the flood; you can imagine then how the flood would operate on the lower land.

Q. Isn't it a fact that the floods of rivers upon lands better their condition for the reason that it settles upon the property a fertilizing matter?

A. At times; but on other occasions it decreases its value for the reason that it leaves only a sandy loam and leaves pools of water.

Q. But a good many times the floods of rivers are very beneficial to the properties?

A. That applies in pasture grounds because it makes the grass grow, but it is not so with sugar cane.

Q. Then the floods of rivers are very beneficial for pasture lands?

A. Yes, sir.

Q. When did you see the plantation "Cercado Ramirez" last?

A. Three weeks ago—that is the three weeks I have been in San Juan; I have a sugar cane property adjoining it.

Q. How often did you visit the "Cercado Ramirez" in 1902?

A. On several occasions on horseback in connection with the cattle business.

Q. And during those occasions you went there on business purposes to see Messrs Garzot and Fuertes for the purchase of cattle?

A. Yes, because I have cattle, and I made sales to them, and I go there to their property.

Q. So you didn't make the special purpose of your visit at
535 that time the examination of those properties and its quality?

A. No, sir; but the fact that I am a property owner makes me observe the land on passing by, and on horseback glancing on all sides and observing the nature of the lands.

Q. So the knowledge you have of the value of the property is derived from looking over the property as you passed by going to see Messrs. Garzot & Fuertes?

A. Yes, sir; on crossing it going to "Los Puentes," another finca where I have done business, I have had occasion to look at it.

Q. Did you examine the different classes of land of the "Cercado Ramirez"?

A. My examination goes as far as looking over the property and observing that a portion of it is under water and that others are not —examination of that kind.

Q. These observations of yours have been made on horseback and casting glances over all the plantation?

A. Yes, sir; observing when the river is flooded to see how far the water goes.

Q. You do not know the different number of acres within the same plantation of different classes of land, do you?

A. Yes, the land whereupon the dwelling house of the finca is located is of a better class owing to the fact that it is not flooded by the river; then there is another portion of an inferior quality because it is flooded; and there is still a third class, that nearest the mangroves, or the sea, which is always under water, and is, therefore, much inferior.

Q. Is it not a fact that the cattle industry in Porto Rico is one of the most flourishing industries in the island next to the sugar industry?

536 A. At present and in some years past—1902-1903—the cattle industry has not been prosperous, flourishing, on account of prices, and I have lost on it; I am a cattle dealer myself and I have lost money on the business on account of the decrease of prices.

Q. That was in this year, was it not?

A. No, in those years past, 1902, 1903 and 1904.

Q. Is it not a fact that in these past years 1901, 1902 and 1903 most of the cattle of Porto Rico has been exported to Cuba and Central American countries, which greatly increased its value, and, in fact, made it during those years a most flourishing industry.

A. The only increase obtained was in the price of the *de*male cattle which was being exported in those years to Cuba, but those lands which we have are not for that kind of cattle, that is for young heifers; it is proper for older cattle; the steers in those years were exported to the Antilles and the prices went down.

Q. And those female cattle you speak about reached the highest price in this island that they have had for many years, did they not?

A. Yes, I can tell you that because I myself made sales of that kind.

Q. Are you on business relations with Messrs. Garzot & Fuertes?

A. Yes, I sell them cattle when it is convenient—fattened cattle all ready for exportation.

Q. Are you in current account with them?

A. No sir; I make sales to them and they pay me right away; they are cash sales.

537 Q. Have you been in commercial relations with them for a good many years past?

A. Yes, sir, in connection with the cattle business for nine or ten years, since the time I had this property.

Q. Are you indebted to them in any amount?

A. No, nothing.

Q. Are they indebted to you?

A. No.

Q. Who called you here to testify?

A. Mr. Faustino Fuertes.

Q. Did he explain to you what your testimony would be about?

A. He asked me if I would act as an expert witness in giving prices as a property or land-owner as to the prices in those years of land. I have not come here from Naguabo to San Juan for that

purpose; I came here to undergo medical treatment under Dr. Lippitt; I was here and he found me in town and made that request of me.

Q. When did he speak to you about testifying here?

A. Yesterday afternoon.

Q. Never before that?

A. No, sir.

Q. Didn't you talk to him about this case this morning?

A. Yes sir, and yesterday afternoon, too, as to the same matter—coming here and giving that information.

Q. He requested you to come in here and testify as a personal favor to him, didn't he?

A. I was just about to go to see the doctor to treat me and he overtook me and said "O, you can go later!"

Q. And you came as a personal favor to accommodate him?

538 A. Yes, sir, as a special favor; we are friends and neighbors.

Q. Very intimate?

A. No, not very intimate; only ordinary friendship; he lives in the Playa and I in the town—just "good morning" and "goodbye."

Q. You have known him for the past ten years?

A. For thirty years, ever since he came to Porto Rico.

Q. Have always been on good terms with him?

A. Yes, sir.

Q. Did you discuss with him the value of those properties when he requested you to testify about the matter?

A. No, because at that time those fifty acres which I have rented from Capó were not worth as much as to-day; the price at present is larger; they are now asking a greater price on account of the sugar central.

Q. All that district has been dedicated to sugar planting, has it not?

A. There is a portion of which Mr. Gustavo Preston has nearby "Islote Quiñones" devoted to sugar cane.

Q. And certain parts of "Cercado Ramirez" are planted in cane?

A. Of the "Cercado Ramirez" there is a portion, twenty acres around the dwelling house; mine is divided by a narrow country road.

Q. Two sugar centrals have been erected in that vicinity?

A. No, sir, only one.

Q. And the other is about to be erected?

A. The other one is in Humacao; the Naguabo central is now being built and land has been planted in anticipation of sales to said factories.

539 Redirect examination by Mr. PETTINGILL:

Q. How far is it from the "Cercado Ramirez" to the town?

A. It is very near; I go on foot; mine is adjoining the back yards of the houses of the town; it is about five minutes' walk.

Witness excused.

JAMES R. NOBLE, witness called on behalf of the defendants, having been duly sworn, deposed as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your name?
A. James R. Noble.
Q. Where do you live?
A. In San Juan.
Q. What is your occupation?
A. I am employed now in the Auditor's office.
Q. Do you own, or are you interested in, any lands in the district of Naguabo?
A. Yes, we have lands about three miles from the bay and three miles from the town, more or less, called "Esperanza."
Q. How long has your family owned that land?
A. A great many years.
Q. Since you have been grown up have you been down there more or less?
A. I lived there fifteen or sixteen years.
540 Q. Up to what time?
A. Up to 1890.
Q. And since that time in San Juan?
A. Yes, sir.
Q. Since moving to San Juan have you been back and forth?
A. Very frequently, yes, sir; the first years I used to go every two or three months.
Q. Are you acquainted with the tract of three hundred and fifty acres near the coast there called "Cercado Ramirez?"
A. Yes, I have been there a good many times.
Q. And surrounding places there, like "Islote Rivalta," "Islote Quiñones" and others?
A. Yes, I have been over them.
Q. Is there any marked difference in the quality of those places taken as a whole, or are they practically the same?
A. There is a difference, because in some places the river washes some of the land more than in others; there are uplands considered a little better than the other part.
Q. But taken as a whole, the tracts like "Islote Quiñones," "Islote Rivalta," "Cercado Ramirez," and "Cercado de Torres," the quality of the land, as a whole, is about the same?
A. It varies a good deal because where the river washes the land is either sandy or hard clayey land; it has been washed.
Q. That applies equally to parts of different lands?
A. Yes, sir.
Q. Under the same conditions the part that is not washed by the river is about the same?
A. The higher parts are considered a little better than the lower parts.
541 Q. I will ask you then if you were acquainted with the values of lands in that vicinity—the jurisdiction of Naguabo, in the year 1901 or 1902?

A. More or less, having lived so long on the plantation and working the plantation for fifteen years. I think I know more or less.

Q. Then, in your judgment, in the year 1902, what was the value of this tract "Cercado de Ramirez?"

A. As there were no sales at that time it is a difficult matter to say what the exact value of the land was—very difficult indeed.

542 Q. In 1901-1902 to what use was the land in that vicinity—"Cercado Ramirez" was put?

A. Cattle.

Q. Now, basing your judgment upon this use which was made of these lands and the condition of the cattle business at that time—the profits that it was possible to make from that business, what, in your judgment, would be a reasonable value for those lands in 1902?

A. About fifty dollars an acre; that means to say the best lands—the very best "vega" land at that time.

Q. Now, if you can state, what portion of the "Cercado Ramirez" was the best land and what portion inferior?

A. That is difficult for me to say because I have only visited the place occasionally, and from my few visits there, as I said, the lands that were not washed by the river were inferior to others where the river in very heavy floods would come up leaving a deposit; it was very rarely the river came right up, but as a rule it generally washed that whole part; I understand there is a part of it washed away; I was there some months ago and they showed me where a part of it had been washed away.

543 Cross-examination by Mr. HERNANDEZ:

Q. Mr. Noble, you don't pretend to come here and testify as an expert, do you?

A. No, not exactly; not as an expert. Will you explain your word "expert," please, can I ask? I am not a mechanical engineer or anything of that kind, but as a resident in the place I think that I could give some sort of information if required; if that is what you mean by "expert" in this case.

Q. No, never mind about the definition of "expert"——

Mr. PETTINGILL: Then how do you expect him to testify as to the meaning of "expert."

Q. (Continued): Your testimony here is given by you as a resident—the knowledge that you have acquired through residence for a certain period in that vicinity, is it not?

A. Yes, sir.

Witness excused.

544 Defendants here offer in evidence the declaration of Don Jesus Almiroty, given before the District Court of Humacao on July 30th, 1901, in the proceeding brought in that Court by the complainant, the defendant Petronila Patricia Rios and Doña Manuela Gutman to obtain the dominion title to the lands described in the bill of complaint, together with others; this declaration being

offered as a contradiction of the testimony of the said Jesus Almiroty heretofore given in this case, and the same is herewith filed and marked "Defendants' Exhibit 6."

545 EXHIBIT "6" FOR DEFENDANTS.

Don Jesus Almiroty Porrata:

At Humacao, on the thirtieth day of July nineteen hundred and one before the trial Judge Mr. Juan Miguel Kearney, and the undersigned Secretary appeared the witness Mr. Jesus Almiroty Porrata, whom, I the secretary, certify as to knowing:

The judge took his oath in legal form, and being then examined as to circumstances set forth in article 647 of the Law said: That his name is as above stated, that he was born at Guayama, and resides at Humacao, thirty four years of age, married and is a clerk, and that he is not a subject to any of the circumstances appearing in paragraphs 2, 3, 4, and 5 of said article.

Being questioned, and previously having been read the petition applying for the expediente, and being well informed, said:

That he knows of his own knowledge that Doña Manuela Gutman de Bustelo and Doña Maria Rios widow of Rubio and Doña Petronila Patricia Rios y Gutman de Noya are the owners and have had the possession and do possess as such the rustic estates described in the petition at the beginning of this expediente and which has been read to him in this act, knowing that they obtained the said fincas by amicable agreement, entered into by the said ladies on the sixteenth day of January of the present year, in which agreement the undersigned intervened and signed as a witness and therefore, that the facts set forth in the petition aforesaid are true.

He ratified his testimony, which was read to him, as he renounced right to read it himself and signs after the judge, before me, to which I certify.

(Sig.) JESUS ALMIROTY.
(Sig.) JOSÉ R. APONTE.

Correct,
M. S. GEIGEL,
Interpreter U. S. Court.

545½ Defendants further offer in evidence the answer filed by Juan F. Vias, as attorney for the complainant in a suit brought in the district court of Humacao by José María Cuadra for the collection of fees as an incident to the above petition for dominion title, which was dated August 14th, 1901, for the purpose of showing that up to that time the complainant made no claim that she had been deceived in the execution of the contract—the private contract of settlement; and the same is herewith filed and marked "Exhibit 7 for Defendants."

546 EXHIBIT "7" FOR THE DEFENDANTS.

To the Court:

Juan F. Vias Ochoteco, lawyer in the name and in representation of Doña Maria Rios widow of Rubio, before the Court appears, in the Expediente de Dominio proceedings, initiated by lawyers don Rafael Lopez Landrón and Don José Maria Cuadra, the first mentioned in representation of Doña Manuela Gutman widow of Bustelo, and the second named representing Doña Maria and Doña Petronila Rios y Gutman; and according to law state:

That my client has been ordered, under date of the 7th of the present month, that within six days she pay to lawyer Don José Maria Cuadra, the amount of his fees earned in said expediente proceedings for services rendered the said Doña Maria; as the said fees are enormously excessive, I find myself obliged to oppose its payment according to law and invoke therefore the provisions of paragraph two (2) of article twelve (12) of the law of Civil Procedure, in force.

It is sufficient, Mr. Justices, for me to observe that lawyer Cuadra has appeared in these proceedings on behalf of two of the three parties appearing therein, and that at this time he only presents his bill for the share which should be paid by my client. In order that the Court, which is to pass upon this question definitely, as well as the lawyers who are to give their disinterested opinion thereon may form the due idea of the justice with which we challenge the absurd pretentions of Mr. Cuadra.

I omit to object item by item the amounts set forth in the bill, for the reason that they are all equally excessive, and none of them can prosper from the moment that absolutely just and conscientious men intervene in their taxation.

In consideration of the reasons set forth, and invoking the rights already indicated in conformity with the provisions of article 426 and following of our law of Civil Procedure,

I pray the court that it hear attorney José Maria Cuadra, within two days and after hearing the opinion of the attorneys which
547 the court shall appoint to resolve definitely the modifications in the opposed bill of costs that it shall seem just as this will be justice that I ask in Caguas on the fourteenth day of August, 1901.

(Signed) Att'y JUAN F. VIAS.

NOTE.—Notwithstanding the objection which I make in this petition to the allowance of the fees, I reserve the right to proceed in the manner best suited in order to obtain a judgment to the effect that said fees are improper, by virtue of the agreement of settlement made by the attorneys Lopez Landron and Cuadra.

The Court will please take notice of this statement.

It is justice on the date last above written.

Att'y JUAN F. VIAS.

Filed this hour, to wit: half past five o'clock of the 14th day of August by Don Lorenzo Jimenez Garcia, he signs and I certify.

LORENZO JIMENEZ, *Aponte.*

A true translation, certified to by
(Signed) M. S. GEIGEL,
Official Interpreter.

548 Counsel for complainants objects to the introduction of the foregoing document because it is not the kind of document stated in the offer, and it is not an answer of the complainant herein, but only purports to be objections made by attorney Vias on behalf of Doña Maria Rios to the bill for fees presented by attorney Cuadra. It is not an answer in any suit instituted by attorney Cuadra, but merely objections, as aforesaid, filed by Señor Vias in the supplementary proceedings of the dominion title proceedings instituted by Cuadra for the collection of his fees, and referred to in "Exhibit E. for Complainant."

Obj. sust'd, def'ts except.

Defendants, for the like purpose, offer in evidence a certified copy of the record of the municipal court of Humacao in a conciliatory proceeding brought by the complainant through her attorney Juan F. Vias, against the defendant Petronila Patricia Rios, asking the annulment of the said private contract of settlement, said record being dated December 23rd, 1901; and the same is herewith filed and marked "Exhibit 8 for Defendants."

549 EXHIBIT "8" FOR THE DEFENDANTS.

Don Francisco Gonzalez Fagundo, secretary of the municipal court of the city of Humacao:

Hereby certify that in the roll of conciliatory proceedings of the current year, kept by this court and under number 15, the following proceedings are found:

Act No. 15: In the city of Humacao on the twenty third day of December nineteen hundred and one before the municipal judge and myself, the secretary, this being the day and hour set for this hearing there appeared Don Juan F. Vias Ochoteco, resident of this city, married, of age and a lawyer accompanied by his "hombre Bueno" (good man) Don Juan B. Sifuentes Lopez, in order to celebrate an act of conciliation with Dona Petronila Patricia Rios de Noya assisted by her husband Don Francisco Noya, in order to celebrate an act of conciliation. Mr. Vias appears in the name of Doña Maria Rios widow of Rubio, of age, property owner, and of this vicinity. This conciliation has for its object, that the defendant doña Petronila, assisted by her husband, don Francisco Noya, should agree to recognize the nullity of the private contract of agreement of the hereditary rights, that both sisters together with their mother doña Manuela Gutman entered into during the month of January of the current year, under the direction of lawyers don Rafael Lopez

Landron and don José Maria Cuadra, and in case it should not be effected in this manner then that she should agree to declare rescinded and consider in fact and in law the said contract rescinded, on account of non-compliance on the part of the defendant and of her mother doña Manuela regarding the obligations corresponding to each. And one o'clock in the afternoon, the time which was fixed for this hearing having transpired with excess, without the defendant having appeared, without having set forth any just cause for not having appeared, the municipal judge in view of the provisions of articles 468 and 472 of the law of civil procedure, considered
550 as intended the present act of conciliation, ordering that the entire proceedings stand of record of which a copy should be issued to the party who should request it, and the defendant is adjudged to pay costs. This hearing was concluded, the appearing parties signing the same and I certify.

FLORENCIO BERRIOS.
Lawyer JUAN F. VIAS.
JUAN B. SIFUENTES.
FRANCISCO GONZALEZ.

This is a true copy corresponding with its original to which I refer, and in order to deliver to lawyer don Juan F. Vias, I issue the foregoing at Humacao, on the twenty third day of December, 1901.

(Sig.) FRANCO. GONZALEZ.

A true translation.
Certified to by
(Signed) M. S. GEIGEL,
Official Translator.

550½ Same as above.

Counsel for complainants objects to the introduction of the foregoing document for the purpose stated, because by the nature of the act of conciliation itself, in accordance with the law of Civil Procedure in force in Porto Rico at that time, it was not the proper time and manner of making claims of fraud, which should be done in a complaint in an ordinary action.

Defendants, further to show that the complainant made no claim of fraud or deceit in the execution of said private contract of settlement, offer in evidence the answer filed by her through her said attorney Juan F. Vias to the petition of reconvention presented by Doña Manuela Gutman, to compel the compliance of said complaint with said private contract of settlement, which answer is dated January 31st, 1902; and the same is herewith filed and marked "Exhibit 9 for Defendants."

551 EXHIBIT "9" FOR THE DEFENDANTS.

Filed July 7, 1905.

To the Court:

Juan F. Vias Ochoteco, attorney for Doña Maria Rios viuda de Rubio, appears before the Court in the declaratory action which the said lady has brought against Doña Manuela Gutman viuda de Bustelo and Doña Petronila Patricia Rios de Noya demanding the nullity of a private agreement and of an "expediente de dominio" (dominion proceedings) or subsidiary rescision, and replying to the cross complaint filed by the said Doña Manuela Gutman, requiring that the private agreement hereinbefore referred to be complied with, according to law states:

That it may please the Court to definitely pass judgment upon the cross complaint filed by Señora Gutman, declaring it to be improper and without foundation, with costs taxed against her, in view of the fact that, according to good principles of law, the other side, under the pretext of filing a cross complaint against my client, cannot bring an action in connection with this suit, which is absolutely incompatible with the matter in litigation, inasmuch as in the principal complaint the issue is confined to the nullity or recision of the private agreement, the efficacy of which is upheld by the other side, and until the Court shall have passed upon that question, it will not be proper for defendant to change of her own accord the action brought by complainant who is the only one that, under the provisions of Section 1124 of the Civil Code can bring this action, should any of the parties to a contract fail to comply with the stipulations therein made.

Although in my estimation the cross complaint filed by Doña Manuela Gutman is unfounded and inadmissible, for the reason that the action to be taken upon the principal complaint is the ground upon which she should base her demands, and such
552 action would anyway carry with it some action upon the cross complaint now filed, and although the said complaint is illegally presented, owing to the reason that among the facts and grounds which refer to the answer to the original complaint are included other facts and grounds touching upon the cross complaint, being desirous of culminating the pious work so generously started by the attorneys who took part in the private agreement of January 16th last, with a proposition based solely on equity, harmony and good will, I excuse the said legal defect in order to enter as soon as possible in the judicial testamentary settlement, which is the most discreet, practical and shortest means, that each of the interested parties begin to peacefully and quietly possess, without any dispute or fear of future litigation which may arise on account of the vague language of some of the clauses of said agreement, avoiding endless expenditures, and with inequivocal and safe titles, of such portion of the separate and free property which each of the heirs of Don José Maria Rios y Berrios has a right to demand, under the law.

I, therefore, base my opposition to the cross complaint in the following facts and legal grounds:

Facts.

1. I omit to make any reference to those marked One and Two in the communication of the other side, because in those facts she confines herself to state, through her lawyer, opinions of a strictly private nature, tending to showing the grounds which they had for seeking an end to the undivided condition of the property left by Mr. José Rios y Berrios, and against which we hold that the endless chain of complicated lawsuits referred to by Mrs. Gutman has never existed, but only the voluntary testamentary proceedings of Mr. José Maria Rios, the course of which as it appears in the expediente, was constantly interfered with by the said lady, wasting in the meantime the best and freest portion of the enormous estate left, consenting to the sale at auction of lands belonging to the
553 heirs of Rios, for the payment of costs and taxes, although she had in her possession enough money to meet those obligations, it being a noteworthy coincidence that the successful bidders were the children had by Doña Manuela during her second marriage.

2. I do not deny that it being the desire of Doña Maria Rios to tear the thick Penelope web surrounding her, always woven and unwoven by Mrs. Manuela Gutman, she subscribed the private agreement of transaction of January 16th, 1901, which became ineffective, for incompliance on the part of Mrs. Manuela Gutman and the lawyers who took part in the transaction, of the provisions of clauses, one, two, three and six of said agreement, by which Mrs. Manuela was to *immediately* deliver to the daughters had during her first marriage, Doña Maria and Doña Petronila, the plantation Mulas and Culo Prieto, reserving for herself only the remaining lands situated in the district of Naguabo, left at the death of her first husband José Maria Rios y Berrios, the lawyers Messrs. Cuadra and Lopez Landron being left in charge of completing the transaction, leaving each interested party in possession of the property adjudicated, providing them with the respective titles, recorded in the Registry of Property.

3. In the fifth fact set forth in the communication which we now challenge, the other side ingeniously explains the causes upon which Mrs. Manuela based the non-delivery of the properties, and enters to fully interpret some clear and precise clauses of the private agreement, inventing the strange theory that the delivery was to be made giving full possession, and that the same consists in the fixing up of the titles and their recording in the Registry of Property. The statement is made that, while the lawyers were engaged in this work, the widow of Rubio continued provisionally holding the properties, paying for the lease of plantation Mulas, the fact and truth being that my client was never informed of such decisions, which
554 she would have never accepted, because the contract imposed upon Doña Manuela the unavoidable obligation of *immediately* delivering the plantation Mulas y Culo Prieto, and on the

other hand, she could hardly pay rent for properties which were said to belong to her.

4. I admit that the respective attorneys instituted an expediente of dominion for the purpose of recording the properties adjudicated in the transaction, but neither has this expediente been instituted according to law, nor was its admission proper, for the reason that there existed written and incontrovertible titles, some of which were recorded in the Registry of Property, nor can I admit the statement made that the presentation of the private agreement in the expediente de dominio, made the same authentic and gave it the force of a public instrument.

5. My client has not been summoned in any shape or manner whatsoever for the purpose of executing the public instrument referred to in the private agreement, or settlement, but even she had been, she had the right to refuse such pretension, for the reason that Doña Manuela Gutman failed to fulfill the obligations to which she was bound, not only because she did not *immediately* deliver the plantation Mulas and Culo Prieto, but because she also included in the expediente of dominion instituted, and as her own property, certain funds which certainly did not properly belong*ed* to the estate left by Don José Maria Rios y Berrios at his death.

6. It is true, very true, that upon my client being invited by the Attorney for the other side in an attractive letter to turn over to her sister Doña Petronila Patricia one half of the plantation "Mulas" which is leased by my client, that she replied in the manner she deemed fit that she was not disposed to make such delivery nor to give her consent thereto.

7. Doña Petronila Patricia Rios de Noya fully convinced that her mother had not complied with the *ex*tipulations made in the contract, and that she was the only one to blame for not being in
555 possession of plantations "Mulas" and "Culo Prieto," filed a suit against her demanding the compliance of the terms of the contract and damages which undoubtedly she would not have done had she pressed attorneys who took part in the settlement, provided that the statements made in the fifth paragraph of the communication we are now answering.

8. In the private settlement which the other side is uselessly trying to make valid, it was agreed that the remaining lands situated in the district of Naguabo be adjudicated to Doña Manuela Gutman but only such lands as were included in the estate left by Don José Maria Rios y Berrios, but in the expediente of dominion instituted there appear four rural properties adjudicated to the said lady among them one quite important called "Los Brasiles," which was acquired by Doña Maria and Doña Petronila Rios a long time ago as a result of a division made of the properties left at the death of their grand-mother Doña Petronila Berrios de Rios.

9. I absolutely deny all the statement- set forth in the communication we are now replying in so far as they are in opposition to the statements made by us.

Points of Law.

1. I fully confirm all those set forth in the complaint.

2. The grounds upon which the Civil Code in force is based may be resorted to in order to arrive at the true sense and spirit of the provisions of said Code; but they cannot at all be invoked as legal principles applicable to the divers questions that may come up before our Courts of Justice.

3. The re-cission of a contract is in order whenever there exist a real and proper ground and may be forced against the party that have fail- to fulfill the stipulations made.

4. Costs shall always be taxed against the temerary litigant.

In consideration of the facts herein set forth, I beg the Court to consider this as a reply to the cross-complaint and to definitely pass upon this question at the proper time, denying the complaint
556 with all costs, and admitting the nullity or re-cis-ion and all the other prayers of the original complaint, Justice which I seek at Humacao date up *supra*.

Another prayer: Inasmuch as I have some facts to prove, I pray the Court to please appoint a day and hour for the appearance of the Attorneys and the presentation or filing of the proper written evidence.

Justice, etc.

JUAN VIAS OCHOTECO.

A correct translation.
(Signed) M. S. GEIGEL,
Interpreter U. S. Court.

557 Dr. MANUEL V. DEL VALLE, witness called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your full name?
A. Manuel V. del Valle.
Q. Where do you live?
A. In San Juan, Porto Rico.
Q. What is your occupation?
A. My occupation is dentist and employé of the government.
Q. And your present occupation?
A. Employé of the Naval Station.
Q. How long have you lived in Porto Rico?
A. All my life—I was born here—with the exception of five years that I lived in the States.
Q. Have you any landed interests in the jurisdiction of Naguabo?
A. I have; I am the owner of 671 acres more or less.
Q. Of what kind of land?
558 A. Different kinds of land, pasture land, cocoanut grove.
Q. How long have you owned that or any considerable part of it?
A. Since 1895.

Q. During that time since you have owned that land have you been acquainted with the values of land in the Naguabo vicinity, more or less?

A. More or less, for my personal benefit.

Q. Do you know the "Cercado Ramirez"—a tract of three hundred and fifty acres of that name, down there?

A. That is on the lower side of my property.

Q. How far from that property is yours?

A. Part of that land I should say is about an acre or an acre and a half from the cocoanut grove.

Q. Is all that land in one tract?

A. No, sir, in two tracts.

Q. And since 1895 you have had more or less knowledge of the prices paid for lands in that neighborhood?

A. Yes; since the burning of the sugar factory in 1880 the price of land became very much lower on account of not having any factory where they could grind; that was in 1880.

Q. In 1902 was there any sugar cane raised in that neighborhood?

A. 1902?—Yes, there were two mills grinding, I think, at the time.

Q. What kind, doctor?

559 A. Muscavado.

Q. Was any sugar raised on this "Cercado Ramirez" in 1902? Or had there been any for several years prior thereto?

A. I don't remember seeing any cane there.

Q. To what use was this "Cercado Ramirez," and property in that neighborhood generally, devoted?

A. Cattle feeding.

Q. Irrespective of the value put upon your own land can you, from your knowledge of the conditions and prices of lands generally in that vicinity during previous years and up to that time, give us your best judgment as to what this "Cercado Ramirez" was worth?

Counsel for complainant objects to the form of the foregoing question because it assumes that the witness had knowledge of all the conditions in the surrounding country or in that district at that time.

560 A. To the best of my knowledge I should think this land would be worth between forty-five and fifty dollars an acre at that time.—At that time.

Q. Are they worth more or less at this?

A. I should think land has increased now on account of the central sugar factory being established there.

Cross-examination by Mr. HERNANDEZ:

Q. What is your profession, doctor?

A. At present I am an employé of the United States Naval Station.

Q. How long have you been employed by the United States Naval Station?

A. Since 1898.

Q. And prior to 1898 what was your occupation?
A. Surgeon-Dentist.
Q. When did you graduate?
A. 1891.
Q. Prior to 1891 where did you reside?
A. For five years prior to that time in several states of the Union—New Orleans, Kentucky, Michigan and Ohio.
Q. And between 1891 and 1898 where have you resided?
A. San Juan, Porto Rico.
Q. Have you been practicing your profession during those years?
A. You mean to say from 1891 to 1898?
Q. Yes.
A. Yes, sir.
Q. San Juan has been your permanent residence?
A. Yes, sir.
561 Q. Have you visited Naguabo during that time?
A. Since 1895 almost yearly my vacation is spent over there.
Q. Up to the present year?
A. Except last year when I went to the States. I was there about two or three months ago.
Q. Not since last year in Naguabo?
A. I was there two or three months ago.
Q. And during those years in which you have spent your vacation in Naguabo, how long have you resided there?
A. About a month at a time.
Q. And the rest of the year you have resided in San Juan?
A. In San Juan.
Q. And the purpose of your visits to Naguabo was the spending of your vacation at your place?
A. And to inspect my property also.
Q. But you never made the purpose of your visit a business purpose or the purpose of going around through that district looking up properties?
A. Except my own.
Q. Doctor, you don't pretend to come here and testify as an expert appraiser of land, do you?
A. No, sir; that is not my profession.
Q. The knowledge that you have of the value of lands is derived entirely from the value of your own land?
A. From the interest I have taken in the valuation of my land.
Q. But you have never made it your business to appraise the property of other people?
A. No, sir.
562 Q. Or dedicated yourself to agricultural purposes?
A. No, sir; that is not my profession.

Witness excused.

Defendants here offer in evidence a deed of division of property executed by the complainant and José Toro Rios, a witness previously testifying on behalf of these defendants, showing the divis-

ion between said parties of the parcel of land called "Los Braziles," which parcel is one of those allotted to the complainant and the defendant Petronila Patricia Rios by the private contract of settlement which this suit is brought to annul, and adjudicated in full title to said complainant by virtue of the final decree of the said District Court of Humacao in the said proceeding brought by said last mentioned parties and their mother Manuela Gutman for the declaration of the dominion title thereto.

563 The foregoing document is herewith filed and marked "Exhibit 10 for Defendants."

564 EXHIBIT "10" FOR THE DEFENDANTS.

Filed July 7, 1905.

Number One Hundred and Nine.

Division of Property Owned in Common.

In the City of Humacao, seat of the notarial district, the twenty eighth day of August, nineteen hundred and four, before me, Antonio de Aldrey y Montolio, resident and notary of said city and of the territorial college of the Island of Porto Rico and before the witnesses hereinafter mentioned appear

1. Doña Maria Rios y Gutman, widow of Rubio, property owner, of legal age and resident of this city, and

2. Don José Toro Rios, married, lawyer, of legal age and resident of this city.

I, the notary, certify as to the identity, profession and residence of the parties hereto, who assure me that they are in the full enjoyment of their civil rights, nothing to the contrary being known to me; and having in my judgment the legal capacity necessary to enter into this contract of division of property owned in common (Division de Comunidad), they stated the following facts:

1. That the two parties hereto are seized and possessed in common and in the proportion of one-half undivided interest to each of the following property:

Rural Property.—Parcel called "Los Brasiles," meadow lands of the first class, situated in the barrio of Antón Ruis, jurisdiction of Humacao, comprising one hundred and fifty eight cuerdas and twenty five hundredths of a cuerda of land, the same being equivalent to sixty two hectares, nineteen ares, and eighty five centiares, bounded on the north by the brook Las Mulas, which separates them from the lands of the old plantation "San José de las Mulas," on the east by the lands of the said plantation "San Jose de las Mulas," on the south by lands of the estate Don Francisco Pou y Rios and of Atanasio J. Cuadra, and on the west by lands of the said estate Rios

565 from which they are separated by the rural road of Antón Ruiz that leads from Humacao to Naguabo.

2. That the two contracting parties being of legal age and sole owners of the property hereinabove described, and acting within

the provisions of article four hundred and nine of the Revised Civil Code now in force, they have agreed upon the division of said property for which purpose the necessary survey has been made by the geometer, Don Andres Ducler, and for the purpose of having said agreement stand of record for all times they reduce the same to a public instrument and execute the present instrument in the manner explained by the following clauses:

First. Doña Maria Rios y Gutman, widow of Rubio, and Don José Toro Rios by mutual consent have agreed upon dividing among themselves the rural property, the description of which, measurement and other circumstances are set forth at the beginning of this instrument, and availing themselves therefore of the services of the geometer Don Andres Ducler, of Naguabo, in order to be able to divide by halves the said property and making therefrom a parcel of a separate property for each of them in the form hereinafter explained, and in accordance with the plans for the said purpose made.

Second. The division of the property has been made by drawing a dividing line from north to south forming two parcels of land containing the same number of cuerdas or namely, seventy-nine cuerdas and twelve and a half hundredths of a cuerda each, there remaining therefore two lots one to the east and one to the west, and corresponding to the eastern lot thirty eight cuerdas of mountain lands and to the western six cuerdas and eighty one hundredths of said mountain lands.

Third. That due to the circumstances set forth in the preceding clause and in order to act with more fairness, the contracting parties have agreed to draw lots between them, designating the eastern parcel, or namely, the parcel containing the thirty eight cuerdas of
566 mountain land with the number "1" and the western parcel which contains only six cuerdas and eighty hundredths with the number "2," said lot having been drawn before me, and parcel number 1, or namely, the parcel to the east having corresponded by luck to Doña Maria Rios and lot number "2" or namely, the parcel to the west to Don Jose Toro Rios.

Fourth. Thus the parcel or resulting property in favor of Doña Maria Rios y Gutman, widow of Rios, is described as follows:

Rural Property.—Parcel name "Los Brasiles" meadow lands of the first class, situated in the barrio of Anton Ruiz of the jurisdiction of Humacao, containing seventy nine cuerdas and twelve and a half of a cuerda, which is equivalent to thirty one hectares, nine ares and ninety three centares, of which thirty eight cuerdas is mountain land and the rest is level land, bounded on the north by Las Mulas brook, which separates it from the lands of the old plantation "San José de las Mulas" and from forty cuerdas of Don José Toro Rios; on the east by lands of the said plantation "San José de las Mulas"; on the south by lands of the estate of Don Francisco Pou y Rios and of Don Atanasio J. Cuadra, to-day the former by the brothers Faura and the latter by Don Jose Toro Rios; and on the west by another portion of land which is adjudicated to Don Jose Toro Rios.

Fifth. The parcel of resulting property in favor of Don José Toro Rios is described as follows, to wit:

Rural Property.—Parcel name "Los Brasiles," meadow lands of the first class, situated in the barrio of Anton Ruiz, jurisdiction of Humacao, composed of seventy nine cuerdas and twelve and a half hundredths of a cuerdas, which is equivalent to thirty one hectares, nine ares, and ninety three centares, of which six cuerdas and eighty hundredths are mountain lands and the rest are level lands, bounded on the north by the Las Mulas brook, which separates them from the lands of the old plantation "San José de las Mulas"; on the south, at present, by lands of the brothers Faura; on the west by the Rios estate from which they are separated by the rural road of
567 Anton Ruiz that leads from Humacao to Naguabo, and on the east by another portion of land which is adjudicated to Doña Maria Rios y Gutman.

Sixth. That although a perfect equality is observed in the distribution of the number of cuerdas between the two participants, yet a greater number of cuerdas of mountain land result in favor of Doña Maria Rios than have corresponded to Don Jose Toro Rios, and in order to compensate the loss that to the said Doña Maria might correspond, and inasmuch as Don Emilio Faura Rios, the expert designated by both of the parties hereto, had previously calculated that the value of each cuerda of mountain lands was ten dollars and therefore the difference in the number of cuerdas of mountain lands was thirty-one cuerdas and twenty hundredths which at ten dollars makes three hundred and twelve dollars, in order to compensate the said Doña Maria Rios for the difference in value which she receives as her share, Don Jose Toro Rios delivers to her in this act a draft drawn by him in favor of the aforesaid Doña Maria and on the American Colonial Bank of Porto Rico for the aforesaid amount of three hundred and twelve dollars American money.

Seventh. For the purpose of recording this instrument in the registry of property, the contracting parties appraise each one of the lots or undivided property, the one belonging to Don Jose Toro Rios in the amount of fifteen hundred and eighty dollars and fifty cents, and the one of Doña Maria Rios y Gutman in the sum of twelve hundred and sixty eight dollars and fifty cents.

Eighth. The two contracting parties covenant by mutual consent that the execution of this instrument and carrying the same into effect is entirely independent from pending litigation over the properties of Don Jose Maria Rios y Berrios and that it does not prejudice either in favor or against the interested parties the said litigation, and both of said parties bind themselves not to introduce it as evidence in his or her favor.

568 Ninth. The contracting parties appoint this city for all acts and proceedings which might ensue from the enforcement of this contract.

I, the notary, advised the parties as to the following:

First. That I certify as to the delivery of the draft hereinbefore referred to as the same was made in my presence and in that of the witnesses to this instrument, and,

Second. As to the advisability of presenting a copy of this instrument to the registrar of property for the recording thereof, without

which requisite it will not prejudice a third party nor will it be admitted in the courts and tribunals, councils and offices of the government, except in such cases as are provided for by the mortgage law.

Under which bases and conditions the contracting parties execute the present instrument which they accept in all its parts and bind themselves to keep, comply with and enforce in the most solemn form in accordance with law.

They so state, covenant and sign, together with the witnesses present, residents, of legal age and without legal disqualification to act as such, who are known to me, the same being Don Juan C. Medrano and Don Juan F. Vias, after all of them had read each one by himself this document, availing themselves of the right which they had to do so and of which I informed them and to all of which I certify.

MARIA RIOS V. DE RUBIO.
JOSE TORO RIOS.
JUAN C. MEDRANO.
JUAN F. VIAS.
(Signed) ANTONIO DE ALDREY.

The foregoing is a true and correct copy from the original of its contents on file in the general protocol for the year last past and to which I refer. In testimony whereof, and on petition of the agricultural association of "Garzot & Fuertes," I issue the present copy under my hand, seal and signature in two sheets of notarial paper of my own use and affixing at continuation hereof an internal revenue stamp of the value of fifty cents as provided by the Hol-
569 lander Bill and taking note of the issuance of this copy at Humacao thir thirtieth day of May, nineteen hundred and five.

ANTONIO DE ALDREY, *Notary.*

(Internal revenue stamp of the value of 50 cents cancelled by the seal of the notary.)

A correct translation.

M. S. GEIGEL,
Interpreter U. S. Court.

569½ Defendants offer in evidence a certificate of the Acting Registry of Property for the District of Humacao in explanation and supplement of the said deed last offered, and for the purpose of showing the present condition of the record title to the said property; and the same is herewith filed and marked "Exhibit 11 for Defendants."

570 EXHIBIT "11" FOR THE DEFENDANT.

Filed July 7, 1905.

Registry of Property, Humacao, P. R.:

Mr. José Ramón Aponte, Prosecuting Attorney of the District, acting as Registrar of Property in place of Mr. José Maria Cuadra substitute of the incumbent Mr. José Toro Rios.

Certifies: 1st. That at folio 168 of liber 19th of the City of Humacao, the following described property is recorded:

Rural—Tract of land known as Los Brasiles, situated at Barrio Anton Ruiz, district of Humacao, composed of 158 cuerdas 23/100th of another, equivalent to sixty-two hectares, 19 areas, 85 centaires boundering on the N. by the Mulas brook, which separates it from lands of the plantation San José de las Mulas, on the E. by lands of said plantation, on the S. by lands of the heirs of Francisco Pou y Rios and Mr. Atanasio J. Cuadra, and on the W. by lands of the heirs of Rios, from which it is separated by a vecinal road of Anton Ruiz, leading to Naguabo.

This property was acquired by Doña Maria and Doña Petronila Patricia Rios y Gutman in common (pro indiviso) each one entitled to one half thereof, and was recorded in their name on page and liber above mentioned by virtue of certain dominion proceedings (expediente de dominio) instituted by said ladies and Doña Manuela Gutman de Lara, as a result of a settlement, in the District Court of this city.

I also certify: 2—That by virtue of several judicial claims made in this District Court by Mr. José Maria Cuadra y Rosa, to secure the collection of professional fees which Mrs. Petronila Patricia Rios y Gutman de Noya owed him for sundry purposes, an attachment was issued on and upon the share of one half of said estate Braziles belonging to Mrs. Petronila Patricia, to wit: On twenty-nine cuerdas which her share amounted to, to guar-
571 antee the payment of one hundred and fifty dollars ($150.00) for professional fees earned by Mr. Cuadra for instituting the voluntary jurisdiction proceedings before this District Court to prove the possession of several properties, and plus fifty dollars ($50.00) for expenses incurred; also on and upon fifty cuerdas of land corresponding to the same share belonging to Mrs. Rios Gutman de Noya in guarantee- the payment of seven hundred dollars ($700.00) for fees earned by said Mr. Cuadra for conducting the proceedings for the declaration of dominion title on several rural properties, plus two hundred and fifty dollars ($250.00) for expenses incurred.

At the sale at public auction of the two tracts of land of twenty nine and fifty acres respectively, hereinbefore referred to, they were sold to Mr. José Toro Rios, who was the best bidder at the sale; they were recorded in his name by virtue of a deed of sale executed in his favor by Mrs. Petronila Patricia Rios y Gutman de Noya on

the 27th day of June, 1904, before the Notary Public, Mr. Antonio de Aldrey, in the same Vol. XIX of the City of Humacao at pages 171 and 171 over; and finally,

I also certify: 3. That by virtue of a deed executed by Mrs. Maria Rios y Gutman, viuda de Rubio and Mr. José Toro y Rios, present owners of the property known as Braziles, the same was divided up, the portion hereinafter described having been assigned to Mr. José Toro Rios: to wit:

A rural tract of land, known as Los Braziles, composed of vega or plain alluvial land of the first class, situated at barrio Anton Ruiz, district of Humacao, containing 79 cuerdas, 12½ hundredths of another, equivalent to 31 hectares, 9 ares 93 centiareas, of which six acres and 80/100ths are wood land, and the balance plain land, boundering on the N. by Mulas brook, which divides it from the old plantation San Jose de las Mulas; on the S. by lands of
572 Faura Bros.; on the W. by lands of the heirs of Rios, from which it is separated by the vecinal roads of Anton Ruiz leading from Naguabo to Humacao, and on the E. by the other portion of land adjudicated to Mrs. Maria Rios y Gutman. This estate is made up of lands seggregated from another estate recorded on page 168, liber 19 of Humacao, No. 900, which does not appear to be encumbered by any lien. This property has a value of one thousand five hundred and eighty dollars and 50 cts. ($1,580.50). Mrs. Maria Rios Gutman, viuda de Rubio and Mr. José Toro Rios, are the owners of the estate No. 900 above cited, in equal shares and pro indiviso, the former on account of having accredited her title over the same, as per first registration thereof and Mr. José Toro Rios owns one half thereof by purchase at a public sale from Mrs. Petronila Patricia Rios y Gutman, according to registrations 2 and 3 of the said premises at pages 171 and over of liber 19 of this city. The said Mrs. Maria Rios y Gutman and Mr. José Toro Rios, property owners, of legal age, the former a widow and the latter married, both residents of this city, have executed the deed which is now being recorded wherein they set forth:

That by reason of the fact that they are the only owners of the property No. 900 referred to, and in pursuance of the provisions of Sect. 409 of the Revised Civil Code in force, they have decided to divide the property, for which purpose a survey thereof has been made by Mr. Andres Duclar, the division consisting in a line from north to south, forming two parcels of the same number of cuerdas, one to the east and the other to the west, that to the east consisting of thirty eight cuerdas of wood land, and that to the west, that is to say, the parcel or property described in this clause (No. 3) consists of six cuerdas 80/100ths. That for the reasons aforestated and with the view of proceeding more within the law, the interested parties have agreed to submit the two lots to the arbitrament of chance in the presence of the notary public subscribing the deed now being recorded, the lot described in this clause or
573 chapter 3 being drawn by Mr. José Toro y Rios and the other to Mrs. Maria Rios y Gutman—That although a perfect

equality is noticeable in the ares of each lot or parcel, that belonging to Mrs. Maria appears to have more cuerdas of woodland, and in order to compensate Mrs. Maria for her loss, and since the expert Mr. Emilio Faura y Rios, who was appointed by both parties had previously estimated the value of woodland at ten pesos per acre or cuerda, wherefore the difference in the number of cuerdas was thirty one cuerdas and 20/100ths of another which at ten dollars (pesos) per cuerda make three hundred and twelve pesos, Mr. José Toro y Rios turns over to her in the presence of the subscribing notary and instrumental witnesses, a draft issued in her favor by him to the American Colonial Bank of Porto Rico, for the aforesaid sum of $312.00 American cy. both parties declaring by mutual consent that the contract and its enforcement have nothing to do with the lawsuits pending involving properties of Mr. José Maria Rios y Berrios, not affecting one way or the other either of the parties to those suits, both parties further agreeing not to allege them as evidence in their favor.

Therefore, Mr. José Toro y Rios records in his favor his title to the property numbered as aforesaid, which he acquires by adjudication as per division hereinbefore stated. The document comprises another portion of land adjudicated to Mrs. Maria Rios y Gutman, the registration whereof is not requested.

The aforesaid is set forth in a first copy of a deed executed in this city on the 28th of August, 1904, before the notary resident thereof Mr. Antonio de Aldrey, filed in this office at 3 o'clock P. M. yesterday, as it appears in entry No. 37, page 15 of liber 13 of the Journal Book.

The aforesaid agreeing with the registration and with the document aforementioned, and by the withdrawal of the Registrar of
Property of this District Mr. José Toro y Rios on account of
574 being a party hereto, in pursuance of Sections 80 and 277 of
the Regulations Governing the Execution of the Mortgage Law, as District Attorney, I sign these presents in Humacao, on the first day of February, 1905.

JOSÉ R. APONTE, etc., etc.

The above is all that appears from the books of this Registry of Property.

And upon petition of Mr. Faustino R. Fuertes, I issue this at Humacao, on the 26th of June, 1905.

JOSÉ R. APONTE,
District Attorney, Acting Registrar.

A correct translation.
(Signed) M. S. GEIGEL,
Interpreter U. S. Court.

575 Defendants offer in evidence a certified copy of the record of the District Court of Humacao in an incident to a suit brought by the defendant Petronila Patricia Rios against the complainant for the division of certain estates described in the bill of

complaint in the present suit, particularly that part of said record containing the final decree of said court, dated the 10th day of November, 1903.

The foregoing document is herewith filed and marked "Exhibit 12 for defendants."

576 EXHIBIT "12" FOR DEFENDANTS.

Attorney Enrique Lloreda Casabó, secretary of the District Court of Humacao.

Certifies: That in the incident to the suit for the Division of property filed by Doña Petronila Patricia Rios de Noya against Doña Maria Rios widow of Rubio regarding the administration of properties, and in the principal suit accumulated, begun by Doña Maria Rios widow of Rubio against Doña Manuela Gutman and Doña Petronila Patricia Rios de Noya, regarding the nullity of a certain private contract, and by Doña Petronila Patricia Rios de Noya against Doña Maria Rios widow of Rubio regarding the division of property, the following facts are of record:

I. Act.;—In the city of Humacao on the fourteenth day of October nineteen hundred and three, that being the day and hour fixed for the hearing of the oral trial in this incident, there appeared before the court which was composed of the judges Don Salvador Fulladosa, don Ramón Quiñones and Don Charles E. Foote, the lawyers don José Maria Cuadra in the name of Doña Petronila Patricia Rios de Noya; Don Rafael Lopez Landron representing the successors of Doña Manuela Gutman, and Don Juan F. Vias in representation of Doña Maria Rios widow of Rubio—The secretary having given account of the proceedings, attorney Vias moved that all that had been done be annul-ed, on account of the defects in the formation of the separate proceedings, and as he did not consider the question brought up an incidental one, exposing his reasons in support of his motion—the floor being given to attorney Cuadra he moved that the motion of the opposite party be overruled—Attorney Lopez Landron then argued and moved that the incident for nullity be argued and that the costs be taxed to the party presenting the same—Ratification was made by attorneys Vias and Lopez Landron—the court adjourned until two o'clock in the afternoon, the parties having been summoned and they sign together with the judges, and I certify.

SALVADOR FULLADOSA.

577 RAMON QUINONES.

CHARLES E. FOOTE.

Att'y JAUN F. VIAS.

Att'y RAFAEL LOPEZ LANDRON.

Att'y J. M. CAUDRA.

Session: The session being resumed at the hour fixed attorneys Cuadra, Vias, and Lopez Landron appeared—the court deciding the petition of nullity begun by attorney Vias at its last session said:

It appearing that in the act of this trial attorney Vias, on behalf

of his client, based his petition of nullity of all the proceedings, first, in that the separate proceedings of this incident, article 747 was not complied with because the same was not presented to him in order to object, and secondly, because he did not consider as accidental the questions presented at this hearing.—

It appearing that the defect of form alleged does not affect in any way the essential validity of this trial, requisite which is determined by rule 73 of General Order number 118, as being necessary in order that it can be the object of decision, as to all petitions for nullity presented at the time of the trial. It appearing, as to the second question as alleged by attorney Vias, that the court once having admitted the incident and the same having been taken up no appeal lies, except that of reposition, already intented by the parties, therefore the motion for the same is overruled.—It is declared that the petition for nullity shall not lie, as presented by attorney Don Juan F. Vias in representation of Doña Maria Rios widow of Rubio, the costs and charges to be taxed to her, and that the trial be continued. The parties hereto accepted the documents presented by attorney Vias as being true and he and the others submitted the documentary proof to the consideration of the court. The examination of witnesses was then proceeded to, there appeared Don Francisco Busó Cabrera, who was sworn in according to law, and in answer to
578 questions put to him he was considered a competent witness.

In answer to questions of attorney Vias he said that he had received a letter from Mr. Victor Burset to be delivered to Doña Maria which letter was from Doña Manuela, a receipt for the lease of the hacienda "Mulas" that Doña Maria could not pay it, does not remember the date nor the amount of the receipt. Don Victor Burset Masferrer, was then sworn in according to law and stated he is related to the parties, qualifying in every respect as a witness, To questions of attorney Vias, he said: that he wrote the letter to Mr. Busó inclosing therein a receipt of Doña Maria for collection: that he is not certain in what manner the collection was attempted: That he thinks collection was attempted but is not certain. Don Francisco Burset Masferrer was then sworn in according to law and said: that he is related to the parties hereto but ignores in what degree, and that he in every other respect is a competent witness, according to the questions put to him, In answer to questions of Attorney Vias he answered; that he collected from Doña Maria Rios the rent of the hacienda Mulas and that he delivered a receipt. The court whereupon fixed the first and last witness fees at two dollars, and the second at ten dollars. The attorney Vias waived the confession of Doña Petronila Patricia Rios de Noya.

Attorney Cuadra in arguing said, that he moved that judgment be rendered as prayed for in the complaint.—Attorney Lopez Landron then spoke and said that he would not oppose the complaint.—Then attorney Vias spoke moving that judgment be rendered as prayed for in his answer. All the attorneys rectified and the court considered the proceedings closed and fixed the twenty first day of this month at nine o'clock in the morning for the voting of the

judgment, for which act all the parties were cited who sign
579 after the judges before me to which I certify.

SALVADOR FULLADOSA.
RAMON QUINONES.
CHARLES E. FOOTE.
Att'y JUAN F. VIAS.
Att'y R. LOPEZ LANDRON.
Att'y J. M. CUADRA.
ENRIQUE LLOREDA.

Judgment.

2. In the city of Humacao on the tenth day of November nineteen hundred and three these proceedings having been heard in a public and oral trial, in the incident presented by Doña Petronila Patricia Rios, accompanied by her husband Don Francisco Noya as plaintiff and represented by attorney José Maria Cuadra and the defendant Doña Maria Rios widow of Rubio, represented by attorney Juan F. Vias Ochoteco, and also being parties to this suit the heirs of Doña Manuela Gutman, composed of Doña Carolina, Doña Sara, Don Manuel and Don Miguel Bustelo, represented by attorney Rafael Lopez Landron, said suit being for the appointment of an administrator of property.

First. The plaintiff bases her claim that being a co-owner of the properties mentioned and described in the certificate of the Registry, it is just that as such co-owner she should also have her proportionate benefits that the said properties might yield, as well as to share any incumbrance which might be had, and that Doña Maria Rios and the plaintiff being the owners in common of the one-half of the properties, they should also be as to the benefits which might result therefrom, but it appears that Doña Maria Rios enjoys absolutely all the benefits, and that plaintiff herein does not enjoy any of the benefits derived from the said properties, and that such state of things can not well continue to the prejudice of plaintiff and solely to the arbitration of defendant, it being necessary to make a judicial
580 administration of the same, in order that it take charge of the administration of the properties, and good preservation of the same as is just to a good administration, and prays that a judgment be rendered appointing with all the necessary legal formalities, a judicial administrator, in order that he may take charge, and conserve, and work and explo-tation of the farms object of the co-ownership as recorded in the Registry of Property, in favor of Doña Maria Rios, and the plaintiff, with the faculties and duties of all good administrators and empowered to carry out every legal necessity.

Second, it appearing:

That the court by its order of November twelfth of nineteen hundred and two, order that this incident be heard separate ordered that the same be communicated to the defendant Doña Maria Rios, and that she answered part of said writing alleging the pretentions regarding the administration of the common property are not in-

cidental to that of the division of the common estate, because that in order to judge or consider an incidental question from another, it is necessary that it should have influence notoriously in the result of the principal suit, and that if the intention of the plaintiff is that Doña Maria Rios should not continue appropriating to herself the benefits of the farm, which is absolutely untrue, she now comes and endeavors to sue in the form of an incident which is an absolutely different action from the division of property because the defendant cannot be deprived of her right, in the short proceedings like an incident, a right which she has been enjoying peacefully according to law, until she has been defeated in an ordinary action, and that she cannot deliver up the administration of the property to a strange person just because the plaintiff thinks she ought to, to her great prejudice (of the defendant) and to the prejudice of the
581 other parties having an interest in the common property, and that Doña Maria Rios has been in possession of the hacienda "Mulas" by virtue of a contract of lease which contract is in writing and is in force by the voluntary act of the deceased Doña Manuela Gutman, the said Mrs. Rios de Nova being obliged as one of the heirs of Doña Manuela, denying absolutely that the farms in question should belong exclusively to Doña Maria and Doña Petronila Patricia Rios as it is proven by the fact that up to the time of the death of the said Manuela Gutman the rent was paid her, and ends by asking that for the present the administrator should not be appointed and that the costs be taxed to the opposite party.

It appearing that a day having been fixed for the presentment of evidence, the respective attorneys appeared; that the plaintiff offered in evidence public documentary ones, and that in case the same should be objected to that they be revised, and that the defendant offered public and private documentary evidence, the confession at the trial and witnesses and lastly the comparison of any other documents, the plaintiff's documentary evidence consisting of certifications and the defendant asked for the acknowledgment of a private document and the comparison of the signature by experts; the attorney for the defendant moving in his writing proposed his evidence, the intervention of the heirs of Doña Manuela Gutman in these proceedings, as the same are parties in the principal proceedings.

Fourth. It appearing that in the act of the oral trial the respective attorneys have appeared, on behalf of the plaintiff and defendant, and attorney Rafael Lopez Landron, in representation of the heirs of Doña Manuela Gutman, in whose name he heretofore appeared in the proceedings by a writing dated August seventh last,
582 and at which said act attorney Vias presented a writing of nullity to which the other attorneys moved that said pretention be disregarded, and the court previously having considered the matter ruled that the petition for nullity be disregarded, and that the costs be taxed to the plaintiff and that the trial be continued, proceeding to the oral evidence. There being examined Don Francisco Buso Cabrera, Don Victor y Don Francisco Burset y Masferrer, the plaintiff's attorney waived the confession of Doña Petronila Patricia Rios

and secondly the attorney for the other parties responding, according to their writings, Attorney Lopez Landron then stated that he did not opose the complaint, thereby the act was terminated for the future handing down of judgment which was voted on this day. Fifth, it appearing, that during the proceeding of this trial all the legal requisites have been complied with. Having been appointed for the getting up of this judgment associate justice Don Ramon Quiñones.

First. Considering: That the action is founded on a dominion title recorded in the registry of property which said dominion has not been annulled according to the evidence presented by the defendant. Second. Considering, That no limitation depriving Doña Petronila Patricia Rios de Noya of the right to enjoy her property having been proved and the answer to this incidental complaint all that has been decided by the parties it is evident that the appointment of an administrator be proceeded to, in order for the good enjoyment of the common property, by those, who, according to the registry are owners in equal parts, in and to the property in question. Third. Considering, That although in this suit and in the submitting of evidence the heirs of Doña Manuela Gutman were admitted as parties on petition of Doña Maria Rios, widow of Rubio, understanding that said lady during her life was a party to the principal proceedings of nullity or re-cis-ion of private contract and
583 other documents, the division of property to which this one is an incident, it is true that said suc-ession did apcear by virtue of judicial order and that it did not oppose or petition the complainant for which the costs only should be opposed according to rule sixty three of General Order number one hundred and eighteen, series of eighteen hundred and ninety nine, to the defendant Doña Maria Rios widow of Rubio, whose pretentions have been totally disregarded.

We adjudge that we should declare and we do declare valid the complaint presented condemning consequently Doña Maria Rios widow of Rubio, defendant herein, to stop and await the appointment of an administrator to the properties object of this complaint, which said administrator shall be appointed by this court by virtue of the discretional authority conceded by law just as soon as this judgment shall be final, with the formal rights and authority of said office, in conformity with that prescribed in title ninth and book second of the Civil procedure law, and we condemn all the costs of this incident to be paid by said defendant Maria Rios widow of Rubio. This by our final judgment, adjudging we pronounce, order and sign.

SALVADOR FULLADOSA.
RAMON QUIÑONES.
CHARLES E. FOOTE.

Publication.

The foregoing judgment was published and read by the associate justice Don Ramón Quiñones, who was "pontente" in these pro-

ceedings the court being held in public oral hearing today November second nineteen hundred and three, all of which as secretary I certify.

ENRIQUE LLOREDA."

Humacao November ninth nineteen hundred and three. It appearing that on the ninteenth day of July of this year before this court appeared attorney Juan F. Vias representing Doña
584 Maria Rios widow of Rubio, and presented a complaint against Doña Petronila Patricia Rios y Gutman de Noya and Don Domingo Gutierrez, praying for the nullity or re-cis-ion of a deed of purchase and sale, executed in favor of the last mentioned, referring to several farms belonging to the first mentioned owned in common with Doña Mario Rios were adjudicated to her in a certain private contract of agreement, and the said complaint being accepted by the defendants, they presented a deed in his name, by attorney José Mario Cuadra, who answered the complaint and praying that the same be consolidated with the other suit that Doña Mario Rios widow of Rubio has instituted in this court against Doña Petronila Patricia Rios de Noya and her legitimate mother Doña Manuela Gutman about the nullity of a private contract of agreement and of the expediente of dominio by virtue of which the properties were adjudicated to Doña Maria Rios and her already mentioned mother and sister, and recorded in the Registry of Property, basing himself that the action brought in both cases is the same, and that this proceedings is in consequence of another which is still pending and the said actions originate from the same cause.

It appearing that after the adjournment of the trial a day was fixed for the Secretary to arrange the documents and for which act the parties were cited and which said act was done in the presence of the attorneys except the attorney of Doña Maria Rios both agreeing to the consolidation of the proceedings. The associate justice Charles E. Foote, being "ponente," It Appearing that to take up these actions separately the facts would be divided, and therefore in accordance with rule fifth of article one hundred and sixty one of the law of civil procedure the consolidation asked for should be ordered, therefore consolidate this suit brought by Doña Maria Rios widow — Rubio, against Doña Manuela Gutman widow of Bustelo, Doña Petronila Patricio Rios de Noya, regarding the nullity of a
585 private contract of agreement and of an expediente "de dominio" and of inscriptions in the registry of property, which proceedings shall stand until the consolidation shall be in the same state of advancement as the second, and the twenty-eighth of the present month, at nine o'clock in the morning, being fixed for the appearance of the parties to propose the evidence which they might think proper in this suit. It was accorded and the court signs, to which I certify.

SALVADOR FULLADOSA.
RAMON QUINONES.
ENRIQUE LLOREDA.

I also certify that by attorney Don Juan Vias Ochoteco in representation of Doña Maria Rios widow of Rubio there has been presented on this date a writing appealing from the judgment aforesaid, on the second of the present month.

And in compliance with the order of the court on this day, and on petition of attorney Rafael Lopez Landron, I issue the present at Humacao on the seventeenth day of November, nineteen hundred and three.

[SEAL.] ENRIQUE LLOREDA, *Secretary.*

(There are two one dollar internal revenue stamps.)

585½ Adjournment taken until two o'clock this afternoon.

2 O'CLOCK P. M., *July* 7, 1905.

On behalf of the defendants Garzot & Fuertes the first copy of the deed of cancellation of mortgage and sale executed before the notary Herminio Diaz Navarro on August 26th, 1902, by Santiago Palmer and Guillermo Ygarrividez in favor of the firm of Garzot & Fuertes, is offered in evidence; and the same is herewith filed and marked "Exhibit 13 for Defendants." Admitted without objection.

586 EX. 13 FOR DEF'T.

Corrected Document.

Number One Hundred and Forty-nine.

At San Juan, Porto Rico on the twenty sixth of August nineteen hundred and two, before me Herminio Diaz Navarro, lawyer and Notary public, with residence and public office at number thirty three Allen Street, appear—

Mr. Rafael Lopez Landrón, of age, married, lawyer of this vicinity.

Mr. Santiago R. Palmer é Irizarry, of age, married, Notary accompanied by his legitimate wife Mrs. Catalina Romaguera y Avila, of age, married, of domestic duties, both of this vicinity.

Mr. Juan R. Garzot y Romero of age, married, property owner and a resident of Naguabo.

I know the appearing parties who assure me that they have and in my judgment they possess the necessary legal capacity for this execution and say:

First.

That Mr. Palmer appears at this act in his own representation and Mr. Lopez Landron as attorney in fact of Mr. Guillermo Igaravidez Landron which character he proves to me exhibiting a first copy authentic of a power of attorney which is not contradicted nor limited, literally is as follows, to wit:

"In the city of San Juan Porto Rico, United States of America, on the eighteen day of September nineteen hundred, before me, Santiago R. Palmer, Notary of the College of Porto Rico, with residence in this city and a public office at the house number twenty three Fortaleza Street appear: Mr. Guillermo Igaravidez Landrón, of age, bachelor, lawyer, resident of this city, who, in my judgment, possesses the necessary legal capacity for the execution of the present deed of power says: That he gives and confers power, as
587 ample, general and sufficient as in law is required and is deemed necessary in favor of Mr. Rafael Lopez Landron, of age, married, lawyer, and a resident of this city, so that in his name and representation he may do the following: That privately or judicially he may claim, collect and receive all amounts at present or in the future there may be due to the one giving this power, in cash, goods, effects and all other valuables, listed through acts or contracts already made or that may in the future be made or that may be due him in any way, motive or reason, and of those which he should collect and receive to give receipts therefor, and to issue letters in payment, cancelling the mortgages or attachments to which any of the property might be subject belonging to his debtors or bondsmen. Said contracts and obligations he should make appear upon public documents which should contain the requisites and clauses proper to their class, if he should think proper, or if the opposite party should require it. Thus he executes before me, being witnesses thereto the residents of this city Mr. Sandalio Torres and Mr. Federico Yumet. I read the foregoing deed to the grantor and to the witnesses, warning them of the right they have to read it themselves, they reply that they are well informed as to its contents, in the same the first party ratifies and signs with the second party; of knowing the grantor and to everything which I assure in this public document, which I authorize on three sheets of paper of my use, because that belonging to my college being at present out of, I, the notary, certify:

(Signetted) GUILLERMO IGARAVIDEZ LANDRON.
SANDALIO TORRES.
FEDERICO YUMET.

Before me
SANTIAGO R. PALMER.

This is a copy conforming to its original number six hundred and seventy of the current proctocol of the notary Mr. Santiago R. Palmer, who, during his absence I legally substitute. And
588 to deliver to the grantor I issue the foregoing on these two sheets of paper as that of the college has been used up.

Porto Rico on the twenty sixth of the same month and year of its execution.

(Signetted) JUAN DE GUZMAN BENITEZ."

Second.

That Mr. Garzot y Romero appears as active partner and administrator of the agricultural industrial firm established in the town of

Naguabo, under the firm name of Garzot and Fuertes, which character he proves to me exhibiting an authentic copy of a public deed, which not being limited nor contradicted in the same, literally states as follows, to wit:

In the town of Naguabo on the twentieth of May eighteen hundred and ninety nine, before me, Antonio y Montolio, resident and Notary of the city of Humacao, headquarters of the notarial district and of the territorial College of the island of Porto Rico, and witnesses that shall be mentioned, appear Mr. Juan R. Garzot y Romero, married, property owner, of age, and a resident of this town, and Mr. Faustino Rodriguez Fuertes, married, property owner, of age, and also a neighbor of this town. I, the Notary certify as to knowing them, the profession and residence of the gentlemen who appear; they assuring me that they are in the full enjoyment of their civil rights, without anything to the contrary being shown, and possessing in my judgment the necessary legal capacity to execute the present deed of agricultural and industrial firm, they said:

That being convinced of the benefits that might result, dedicating themselves in this town to the raising of stock, plantings of all kinds and other negotiations, agricultural and industrial, they have
589 agreed to constitute a partnership under the conditions and stipulations that separately they have agreed upon; And in order that at all time they may be made to strictly comply therewith, they put them into a public document and execute the foregoing deed in the manner to which the following articles refer:

First. There remains established in this town an agricultural and industrial firm, that shall dedicate itself to the purchase and sale of live stock, plantings of all kinds and all other legal or licit negotiations that refer to agriculture and industry, both of the appearing parties, Mr. Juan R. Garzot y Romero and Mr. Faustino Rodriguez Fuertes being, distinctly or separately active administrators with the use of the firm's signature, and operate under the firm name of Garzot and Fuertes.

Second. The term of duration of this firm shall be that of two years counting from to-day and thereby shall be up on the same day and month of nineteen hundred and one; and without prejudice of belonging, modifying, dissolving or cancelling, before this term, if this should be agreeable to the interested parties, but it being agreed that this society may be prolonged or continued for two years longer without the necessity of a deed prolonging or extending it and by mutual agreement of the parties hereto.

This they said, executed and signed, being present as witnesses neighbors, of age and without legal blemish for being such who I certify as knowing, Mr. Arturo Cabrera and Mr. José Cabrera, after each of them read this document, in use of their right to which I warned them of, all of which I certify.

(Signed) FAUSTINO R. FUERTES,
J. R. GARZOT,
JOSÉ CABRERA,
ARTURO CABRERA, *Soler,*
ANTONIO DE ALDREY, *Not.*

This corresponds well and truly to the original of its con-
590 tents which exists in my general current protocol to which I refer.

In witness hereof and at the request of the firm executing it I issue the present first copy which I signet, sign and rubricate on two sheets of paper, leaving this issue annotated at Humacao, on the twenty third day of May one thousand eight hundred and ninety nine.

(Signetted.) ANTONIO ALDREY, *Not.*

Third.

That Mr. Palmer é Irizarry is the actual owner of the following rustic farms:

First. Rustic estate known by the name of Islote or Islote Rivalta composed of one hundred and fifty cuerdas of first class land, equivalent to fifty eight hectareas, ninety six areas, situated in the barrio of Rio Abajo of the jurisdiction of Naguabo, bounding on the north with the branch known as "de rio Viejo" which separates it from lands belonging to Mr. Juan Garzot; on the east with the same branch called "rio viejo" which separates it from the "Cercado Ramirez" of Mrs. Manuela Gutman widow of Bustelo, as far as the meeting of this branch of river with the "rio blanco moderno"; on the south with the "Rio blanco moderno," which separates it from other lands belonging to Mr. Pilar Ojea to-day his heirs, and on the west with lands of Mr. Cristino Lebron and of the sucesión of Mr. Ramón Argueso from a bamboo at the edge of the river Blanco up to the meeting of a ditch with the already mentioned branch of the "rio Viejo."

(This appears on the margin) Volume 9 of Naguabo, folio 48 over, farm number 452, inscription No. 6.

Second. Another tract contiguous to the former, known by the name of "Cercado Ramirez" composed of three hundred and fifty cuerdas with five hundred and thirty five thousandths, equivalent to one hundred and thirty seven hectareas, sixty seven areas,
591 of first class land in its maior part, situated in the barrio of Rio Abajo, of the municipal jurisdiction of Naguabo, bounding on the north with lands of Mr. Juan Busó; on the east, with those of Mr. José Perez Villamil, to-day Prudencio Barriola, there being a ditch between, with lands of Mr. Juan R. Garzot and Mr. Ramon P. Villamil, before of Mr. Francisco Busó, to where the Rio Blanco empties, which separated it from Mr. José del Carmen Borges and Mr. Prudencio Bariola, and from the farm known as "de los Fuentes" belonging to Mrs. Manuela Gutman, widow of Bustelo, and on the west with the river Blanco, which separates it from the farm "Madam Duran" belonging to the said lady Gutman and of lands of the sucesión of Mr. Ramon Argueso before of Mr. Pedro Lebron and besides with a part of the branch called old river "del rio Viejo" which separates it from the Islote Rivalta, being the property of the said lady Gutman; containing a house made of native timber in bad condition.

(The following appear on the margin) Volume 10 Naguabo, folio 248 farm number 451, Duplicated inscription No. 6.

Third. Rustic estate, or farm, known as "Madam Duran" composed of one hundred and seven cuerdas, with four hundred and sixty eight thousandths, equivalent to forty two hectareas and twenty four areas of low and hilly land, situated in the same barrio of Rio Abajo of the jurisdiction of Naguabo, bounding on the north with the Rio Blanco which separates it from the "Cercado Ramirez" of Mrs. Manuela Gutman and with part of the lands of the sucesion of Mr. Ramon Argueso, before Mr. Pedro Lebron; on the east partly by the same Rio Blanco which separates it from the said "Cercado Ramirez" and with part of the lands of Mr. Juan Busó, and on the south with lands of Juan Busó, on the east with lands of the
592 sucesión of Mr. Ramón Argueso, before Mr. Pedro Lebron.

(There appears on the margin the following) Volume 9, Naguabo, folio 53, farm No. 453, inscription No. 6.

Fourth. Rustic tract called "Los Fuentes" situated in the place of the same name, barrio of Rio Abajo of the jurisdiction of Naguabo, composed of thirty six cuerdas with two hundred and twenty three thousand-s, equivalent to fourteen hectareas, with twenty three areas, of low land, in its major part, crossed by a road, bounding on the north by lands of Mr. Juan Buso and the river Blanco, which separates it from the "Cercado Ramirez," of Mrs. Manuela Gutman; on the east by the same river Blanco, division line from the "Cercado Ramirez," of Mrs. Gutman and lands of Mr. Francisco Busó, joining with the river Anton Ruiz; on the west by lands of Mr. Juan Buso, joining or angle with the said river Antón Ruiz.

(There appears at the margin the following) Volume 9 Naguabo, folio 58, farm No. 454, inscription 6th).

Fifth. Portion of land of one hundred and twenty three cuerdas one hundred and forty nine thousand-s, equivalent to nine hectareas, three areas and ninety nine centiareas, to which it was reduced after the division and alienation that Mr. Palmer made of one hundred cuerdas it was reduced, the rustic farm known by the name of "Cercado de Torres" and also by "Maizales," composed of two hundred and twenty three cuerdas with one hundred and forty thousand-s equivalent to eighty seven hectareas, with seven hundred and twelve areas of first class and hilly land situated in the barrio of Rio Abajo of the jurisdiction of Naguabo, bounding on the north by
593 lands of Mr. Jesus L. Pereyó, before Mr. Esteban Garriga; on the east by lands of the same Perelló, before Garriga, and on the south with the farm called "Islote Quiñones" from which it is separated by the river, and besides by lands of the sucesión Rios y Berrios, with the Rio Blanco, which in part separates it from the lands of Mr. Arturo Gallardo and Mr. Ramon Villamil and the balance of the boundary wth Mr. Marcelino Borges and Mr. Ramón Villamil, before Eladio Baldana.

(The following is found on the margin. Volume 10, of Naguabo, folio 236, farm 551, inscription No. 5).

Sixth. Rustic tract known by the name of "Cercado Maldonado" situated in the barrio of Rio Abajo of the jurisdiction of Naguabo

composed of thirty five cuerdas and one hundred and ninety thousand-s, equivalent to thirteen hectareas with eight hundred and thirty two areas of low land, bounding on the north by land of Mr. Jesus L. Perelló, before Mr. Rodulfo Maldonado; on the east by a small brook which separates it from lands of Mr. Jesus L. Perelló, before of Maldonado, and with the river Viejo which separates it from the farm named "Islote Quiñones" belonging to Mrs. Manuela Gutman, and on the west by a small brook which separates it from the lands of the "Cercado Torres" belonging to the same Mrs. Gutman.

(There appears the following at the margin) Volume 9, Naguabo, folio 63, farm 455, inscription 6th).

Seventh. Rustic estate known by the name of "Islote Quiñones" situated in the barrio of Rio Abajo of the jurisdiction of Naguabo, composed of eighty two cuerdas with ninety five thousandths equivalent to thirty four hectareas and six hundred twenty eight areas of low land, bounding on the north by the river viejo which
594 separates it from the Cercado Maldonado, and from the "Cercado Torres" belonging to Mrs. Gutman, on the east by lands of the sucesión of Mr. Ramón Argueso, before of Mr. Cecilio Rodriguez, and to-day of Mrs. Carmen Fuertes; on the south with the Rio Blanco of Naguabo which separates it from lands belonging to the sucesión of Mr. José Rios Berrios; and on the west with the same river. the hacienda "Mulas" and "Cercado Torres."

(There appears on the margin the following) Volume 10, Naguabo, folio 239, farm 456, duplicated, inscription 6th.)

Fourth.

That these farms were obtained by Mr. Palmer é Irizarry through purchase from Mr. Victor Burset y Masferrer, according to public deed executed before me on the sixth of July last, of which I have at sight an authentic first copy inscribed in the Registry of Property at Humacao respectively, at folio forty six over, of the ninth Volume of Naguabo, fifth inscription of the farm number four hundred and fifty two; folio two hundred and forty eight of the tenth volume of Naguabo, fifth inscription of the farm number four hundred and fifty one; folio fifty two over, of Volume nine of Naguabo, fifth inscription of the farm number four hundred and fifty three; folio fifty seven, over of the ninth volume of Naguabo, fifth inscription of the farm number four hundred and fifty two; folio sixty two, over of the volume nine of Naguabo, fifth inscription of the farm number four hundred and fifty five; folio two hundred and thirty five over of the Volume tenth of Naguabo, fourth inscription of the farm number five hundred and fifty one, and folio two hundred and thirty nine, over of Volume ten of Naguabo, fifth inscription of the farm number four hundred and fifty six duplicated.

595 Fifth.

That when Mr. Palmer é Irizarry obtained the said farms he retained in his power as part of the purchase price, the sum of Thirty Thousand dollars, amount of a mortgage constituted over them by

Mr. Burset y Masferrer in favor of Mr. Guillermo Igaravidez Landron, which sum the first promised to pay the second, at the rate of ten thousand dollars per year, beginning on the thirtieth of June nineteen hundred and three, with interest at nine per centum annually in case of delay, responding (or guarantying) to-day each of the said farms.

The first described one of five thousand dollars as capital and one thousand for costs.

Number two of fifteen thousand nine hundred dollars as capital and three hundred dollars for costs.

Number three of three thousand seven hundred and fifty dollars of capital and two hundred dollars for costs.

Number four of one thousand two hundred and fifty dollars of capital and fifty dollars for costs.

The balance portion of number five, that is to say, the one hundred and twenty three cuerdas one hundred and forty thousand-s, of seven thousand dollars of principal and two hundred and fifty dollars for costs.

Number six of one thousand dollars of principal and fifty dollars for costs, and

Number seven of two thousand dollars of capital and fifty dollars for costs, according to public deed- before me executed on the thirteenth of June and twenty third of July of the present year, which are assured as being inscribed in the Registry of Property of Humacao.

Sixth.

That the appearing party, Mr. Rafael Lopez Landrón in
596 the name and representation of his principal Mr. Guillermo Igaravidez Landrón, confesses having received prior to this act from Mr. Santiago R. Palmer é Irizarry, on account of the mortgage credit of thirty thousand dollars, mentioned in paragraph five aforesaid, the sum of twenty five thousand dollars, being previously warned that having confessed the receipt of said sum, the incumbered farms remain free from all responsibility, as to the same by virtue of said confession, even though it should be proven later that the same was not true in part or in whole. The five thousand dollars remaining, of the said credit, Mr. Palmer delivers at this act to Mr. Lopez Landron as attorney in fact of Mr. Igaravidez Landron, in bank bills of current circulation in my presence and of the witnesses, the second party counting them, finding them correct and taking them into his possession.

Seventh.

That by virtue of the payment made according — the preceding clause, Mr. Rafael Lopez Landrón in the name of Mr. Guillermo Igaravidez Landron grants the most efficacious receipt in payment of the thirty thousand dollars absolutely cancelling, that is to say totally, the mortgage that for that sum was constituted on the farms which have been described according to paragraph five which precedes, allowing the most ample authority and stating his willingness that its inscription might be cancelled in the Registry of Property.

Eighth.

That the seven farms enumerated in the foregoing third paragraph being free from all incumbrances, and in conformity with what they have agreed, Mr. Santiago R. Palmer é Irizarry with the express consent of his wife Mrs. Romaguera y Avila, sells to the agricultural and industrial firm Garzot and Fuertes the one named
"Cercado Ramirez" which has been described in number two,
597 ceding to them the integrity of his rights, binding himself
to the warranty of title and the purchasing firm entering into the possession of the real property without further acts than the present execution.

Ninth.

That the said sale takes effect for the price of fifteen thousand seven hundred and fifty dollars, which is the sum fixed by both parties conforming thereto, the purchasing firm paying said amount in the following manner: Nine thousand two hundred and fifteen dollars, which is delivered at this act in my presence and in that of the instrumental witnesses, Mr. Palmer counting the same, finding them correct, takes them into his possession and issues therefore a receipt in payment, and six thousand five hundred and thirty five dollars, that without interest whatsoever, they agree to pay within one year's time, counting from this day, that is to say, August twenty sixth nineteen hundred and three.

Tenth.

That as a guaranty of the payment of this last obligation, the purchasing firm Garzot and Fuertes constitute a voluntary mortgage over the farm sold for the mentioned six thousand five hundred and thirty five dollars, balance of the said purchase price and for one thousand dollars for costs, the said firm should remain with this incumberance until the said obligation shall be satisfied.

Eleventh.

That express reserve is made as to the legal mortgage, by virtue of which the People of Porto Rico and the Municipality have preference over any other creditor for the collection of the last annuity of taxes that should be imposed on the real property to which we refer,
the executors selecting this city for all the acts and reclama-
598 tions that might arise from the present contract submitting themselves expressly to its tribunals and Judges.

I warned the appearing parties the dispositions of the articles one hundred and fourteen, one hundred and fifteen, one hundred and ten, and three hundred and ninety nine of the mortgage law, reading the same to them as well as this deed, as they renounced the right they have to read it personally, as I advised them that they had, and finding it correct they accept it and ratify themselves, as to what concerns each in the representation which they hold, before the witnesses Mr. Julian José de Ahedo and Mr. Pedro de Elzaburu, of age, of this vicinity, I knowing them and without legal blemish, and they

all sign before me the notary, which I certify as to all that is contained in this public document written on nine sheets of my seal, and in turn I signet and sign.

SANTIAGO R. PALMER.
CATALINA R. DE PALMER.
RAFAEL LOPEZ LANDRON.
J. R. GARZOT.
JULIAN JOSÉ DE AHEDO.
PEDRO DE ELZABURU.
(Signeted) HERMINIO DIAZ."

This is a first copy true to its original that under number one hundred and forty nine, having attached an internal revenue stamp of one dollar, is found in the current protocol of this notary's office under my charge; In witness whereof and at the request of the firm of Garzot and Fuertes, I issue the foregoing on four sheets attaching its corresponding internal revenue stamp of fifty cents, leaving it annotated in its registry and signeting it and signing it in San Juan the same day, month and year of its execution.

HERMINIO DIAZ,
Lawyer-Notary.

(50 cent Int. Revenue stamp, Cancelled by Notarial stamp.)
(Registry of Property Seal.)

No. 550 fo. 203 over, T. N.

HUMACAO, *August 27th*, 1902.

This document is inscribed, as to the cancellations, in the Volumes folios and inscriptions following:

599

Volume.	District.	Folio.	Farm.	Inscription.
9	Naguabo	48 over	452	6
10	"	248 "	451 dup.	6
9	"	53 "	453	6
9	"	58 "	454	6
10	"	236 "	551	5
9	"	63 "	455	6
10	"	239 "	456	6

And as to the sale and mortgage see Volume 10, Naguabo, folio 249. farm No. 451 dup. 7th, inscription. Humacao.
September 2nd, 1902.

(Signed) FRANCISCO PORRATA,
[SEAL.] *Acting Registrar of Property.*

Fees No. 1, 5 of tariff and eight stamps furnished, fifty five dollars and seventy five cents.
(There are 8 internal revenue stamps of 50 cents each cancelled by the registrar's seal.)

I, Z. Vall Spinoza, Official Translator of the U. S. District Court for Porto Rico, do hereby certify that the foregoing translation contained on eleven sheets of typewritten paper and initialed at the margin, is a true and correct translation from the Spanish.

In witness whereof I have hereunto set my hand in San Juan this — day of November, A. D., 1903.

(Signed) Z. VALL SPINOZA,
Official Translator.

600 Also on behalf of the same defendants, there is offered in evidence the certificate of the Registrar of Property for the District of Humacao, dated October 27th, 1903, showing the state of the record title to the "Cercado Ramirez," the property purchased by said defendants, up to the time of the beginning of this suit; and the same is herewith filed and marked "Exhibit 14 for Defendants." And the same is admitted without objection.

601 EXHIBIT "14" FOR DEFENDANTS.

Registry of Property of Humacao, Porto Rico.

Mr. José Toro Rios, lawyer and registrar of property of the city of Humacao and its districts.

Certifies.—That according to results from the books of inscriptions of this registry of property, the gentlemen Garzot and Fuertes, neighbors of Naguabo and represented by the partner Mr. Juan R. Garzot y Romero, married, property owner, of age; through deed executed in San Juan, Porto Rico on the twenty sixth of August, nineteen hundred and two, before the notary Mr. Herminion Diaz Navarro, purchased from Mr. Santiago R. Palmer Yrizarry and from his wife Mrs. Catalina Romaguera y Avila, represented by their attorney in fact Mr. Victor Burset Masferrer, married, of age, and neighbor of San Juan, the following farm:

Rustic.—Estate known by the name of "Cercado Ramirez" composed of three hundred and fifty cuerdas with five hundred and thirty five thousand-s, equivalent to one hundred and sixty seven hectareas, sixty seven areas, of first class land in its major part, situated in the barrio Rio Abajo, of the municipal jurisdiction of Naguabo, bounding on the north by lands of Don Juan Busó, on the east with those of Don José Perez Villamil, there being a ditch between, with lands of Don Juan R. Garzot, and Mr. Ramon P. Villamil, before of Don Francisco Busó, to where the Rio Blanco empties, which separates it from Don José del Carmen Borges and Don Prudencio Barriola, and from the farm known as "de las Puentes," belonging to Mrs. Manuela Gutman widow of Bustelo, with which it bounds on the south, and on the west with the river Blanco which separates it from the farm "Madam Duran"
602 belonging to the said lady Gutman and of lands of the sucesion of Don Ramon Argueso before of Don Pedro Lebron and besides with a part of the branch called of the old river "del rio Viejo" which separates it from the Islot Rivalta." This farm con-

tains a house of native timber in bad condition." That said purchase was effected for the price of fifteen thousand seven hundred and fifty dollars, of which sum, the seller received from the hands of the purchaser and in the presence of the certifying party, the sum of nine thousand two hundred and fifteen dollars and for the six thousand five hundred and thirty five dollars due, they constituted a mortgage upon the farm purchased, for the time of one year which came due on the twenty sixth of August of the current year, without interest and having to respond besides of one thousand dollars, which they calculated as costs, the said contract being inscribed in Volume ten of Naguabo, at folio two hundred and forty nine, farm number four hundred and fifty one duplicated, seventh inscription.

By another deed executed in San Juan Puerto Rico, with date of the eighteenth of October of the same year nineteen hundred and two, before the notary Mr. Jacinto Texidor y Alcalá del Olmo, Mr. Santiago R. Palmer é Irizarri and his wife Mrs. Catalina Romguera, neighbors of San Juan, constituting a mortgage over the right of mortgage which they had in the farm before described, in favor of Mr. Manuel Padin Otero, and Messrs. Cerecedo Brothers and Company, for a principal of one thousand dollars and three hundred dollars which were calculated as costs, for each one, without interest, and for a term equal to that of the mortgage, that is to say, coming due on the twenty sixth of August of the current year of nineteen hundred and three. This contract caused the eighth and ninth inscriptions of the aforesaid mentioned farm, at folios two hundred and fifty and twenty five of the volumes tenth and eleventh
603 of Naguabo, in favor of the said Mr. Manuel Padín y Otero and Messrs. Cerecedo Brothers and Company, respectively.

By the tenth inscription of the said farm at folio twenty six of the mentioned volume of Naguabo, made by virtue of the deed executed in the city of San Juan, Porto Rico, dated the thirty first of October of nineteen hundred and two, before the Notary Mr. Damian Monserrat, Messrs. Cerecedo Brothers and Company represented by their active partner and administrator Mr. Enrique Cerecedo San Millán, bachelor, merchant, of age and neighbor of San Juan, ceded and transferred in favor of Messrs. Garzot and Fuertes, represented by their partner Mr. Juan R. Garzot Romero, the rights—on the mortgage right which in their favor had been constituted by Mr. Santiago R. Palmer é Irizarri, on the farm already referred to, for an equal amount, that is to say, for one thousand dollars, the ceders having received the same before the certifier to their satisfaction.

By the eleventh inscription of the same farm made on folio twenty seventh of the indicated volume eleventh of Naguabo, and by deed executed in San Juan, on the eleventh of March of the current year before the Notary, Mr. Jacinto Texidor y Alcalá del Olmo, by Mr. Victor Burset Masferrer, neighbor of San Juan, with character of attorney in fact of Mr. Santiago R. Palmer é Irizarri and of his wife Mrs. Catalina Romaguera y Avila, confessed having received from the debtors Messrs. Garzot and Fuertes, Four thousand

five hundred and thirty five dollars, and thereby consented that the mortgage be cancelled which was incumbered in favor of Mr. Palmer.

And lastly, by deed executed in San Juan before the Notary Mr. Damian Monserrat y Simó, dated September second last, Mr. Manuel Padin Otero, with the consent of his wife, confessed having received from the hands of Mr. Juan R. Garzot y Romero,
604 active partner of the firm of Garzot and Fuertes, the sum of one thousand dollars, and consented that the encumbrance be cancelled, that for which sum he had in his favor in the farm referred to in this certificate.

All the foregoing and which are in conformity with the operations effected in this registry, there results: That the dominio, (ownership) of said farm of which this certificate is object, corresponds to Messrs. Garzot and Fuertes, through title of purchase, and that the mortgage credit that burdened on the same in favor of Mr. Santiago R. Palmer é Irizarri, has been cancelled, as to the sum of five thousand five hundred and thirty five dollars, and the other one thousand dollars over, to complete the six thousand seven hundred thirty five dollars of its total amount, cancelled also, by consolidation, as said sum was ceded by Messrs. Cerecedo Brothers and Company in favor of the aforesaid Garzot and Fuertes, said gentlemen having united in themselves in regard to said property the character of owners & creditors of the same.

This is all that results from the operations of the Registry of Property.

And that in this manner it may be proven where wanted I issue the present (or foregoing) at Humacao on the twenty seventh of October nineteen hundred and three.

(Signed) JOSÉ TORO RIOS, *Registrar.*

(There is a seal of the Registry of property of Humacao, P. R.)

I, Z. Vall Spinoza, Official Translator of the U. S. District Court do hereby certify that the foregoing translation contained on four typewritten pages, is a true and correct translation from the Spanish.

In witness whereof I have hereunto set my hand at San Juan, this 12th day of November A. D. 1903.

(Signed) Z. VALL SPINOZA,
Official Translator.

604½ DON FAUSTINO RODRIGUEZ FUERTES, one of the defendants herein, called on behalf of defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your name?
A. Faustino Rodriguez Fuertes.
Q. Where do you live?
A. In Naguabo.
Q. Are you a defendant in this case?
A. Yes, as a partner of the firm of Garzot & Fuertes.

Q. What is the name of your partner?

A. Juan R. Garzot.

Q. How long has the firm been in existence?

A. Since 1887; let me explain to you; in the first place, in 1887, it was Garzot, Fuertes & Company; that firm was dissolved in 1893 and a new one in the name of Garzot & Fuertes was organized.

Q. From 1893 on, what was the firm's business?

A. The raising and selling of cattle.

Q. In 1902 did the firm of Garzot & Fuertes purchase any land involved in this litigation?

A. Involved at present, but not at that time.

Q. But it was bought in 1902?

A. Yes, sir, on the 26th of August.

605 Q. Tell us from whom you bought, what you paid, and how the transaction was concluded—how the sale was carried through?

A. During the first fifteen days of August, 1902, Mr. Victor Burset, a representative of Mr. Santiago R. Palmer and his attorney in fact, approached us for the purpose of offering for sale one or two lots or properties which we had leased from Mr. Palmer, who, at that time, was the owner of the property; Mr. Garzot, who, at the time, lived in San Juan, said to him that he would consult the matter with me, and as to buying he said he would buy "Cercado Ramirez" on account of that property being abutting with another property which we had leased from Mr. Garzot; and this property, on account of being adjoining the other belonging to Garzot, separated from it simply by a ditch, and on account of the fact that we had already enclosed or fenced in for the cattle, which fences we have constructed at our own expense; also in view of the fact that we had erected on the premises cattle scales, and also from the fact that there was a dwelling house upon it for the residence of the overseer or mayordomo of the property—those are the reasons why we elected to buy that property, not because the land was better or worse, but in view of those facts alone.

Q. What was the other lot offered to you besides the "Cercado Ramirez?"

A. We were offered our choice of seven — them, two of the small ones or one large one. Then he was asked to furnish the documents or papers; then they delivered the deed in favor of Palmer; this paper or document was taken or referred to an attorney of our

606 confidence, who was Mr. Hernandez Lopez, this attorney, after looking over this paper, asked us to furnish all the documents to him regarding those lands; all these documents or papers were furnished to Mr. Juan Hernandez Lopez, and in a day or two afterwards we went back again to see Mr. Juan Hernandez Lopez to hear his opinion about it; Mr. Juan Hernandez Lopez said that the documents were in perfectly good shape, that everything was correct; that under the provisions of the mortgage law you could not find a better title than that; that according to those documents Mr. Santiago R. Palmer was the owner of those properties and could do anything he pleased with those lands, and that we could purchase

those properties freely without any fear whatever, that is, and make a legal purchase.

Counsel for complainant moves to strike out all that part of the answer of the witness which refers to alleged statements made by Mr. Hernandez Lopez in connection with this property.

Q. What price did you pay?

A. I have got something else to say. Mr. Hernandez Lopez said to us that there was only a mortgage in favor of Mr. Guillermo Ygarrividez; after that we went to Humacao to the office of the Registrar of Property to see if there was anything, and, as a matter of fact, we found everything perfectly correct and only found that mortgage already referred to.

Q. What price did you pay?

A. At the rate of forty-five dollars per acre, good and bad land, or a total of fifteen thousand seven hundred and fifty dollars.

Q. Explain how and when that was paid?

607 A. The purchase was agreed for that amount payable nine thousand two hundred and fifteen dollars in cash and six thousand five hundred and thirty-five dollars payable within one year without any interest whatsoever, the property remaining mortgaged for that amount. Six hundred dollars in cash were delivered and eight thousand six hundred and fifteen dollars were paid by Mendizabal & Company, which, together with the six hundred previously paid, made a total of nine thousand two hundred and fifteen dollars, the amount agreed upon. This amount was paid by Mendizabal & Company in the following manner: Five thousand dollars in a check against the Colonial Bank in favor of Rafael Lopez Landron, which was the balance of the mortgage in favor of Guillermo Igarrividez, his brother; and he got that money and gave a release for the total of the thirty thousand dollars of which this five thousand dollars remained due; the other three thousand six hundred and fifteen dollars were delivered by the house of Mendizabal & Company in a check in favor of Victor Burset and against the Spanish Bank of Puerto Rico.

Q. Now as to the deferred payments due in a year?

A. In the month of October of the same year it seems that they made a cession in favor of Mr. Manuel Padin y Otero and another in favor of Cerecedo Hermanos & Company, for the same amount.

Q. For the same amount?

A. Yes, sir, exactly the same amount, at a discount of one per cent.; upon our being informed of this matter we approached those

608 gentlemen with the purpose of trying to get them to make those cessions to us with the same discount; Mr. Manuel Padin refused; Messrs. Cerecedo Hermanos said that they would, they agreed to it, provided that we should pay one-half of the expenses incurred, because as that cession was made in favor of themselves they had to send that paper to be registered in the Registry of Property of Humacao; after that it was transferred over to us and they agreed to it; that is to say, this amount due to Cerecedo Hermanos was paid in the following manner: The cession in our

favor was made on October 31st, 1902, and was charged up to us for our account, because we have an account with these gentlemen; and some days before we had sold to them a draft for over seven thousand francs on the Bank of Paris; the draft was from the Cayenne Bank against the Bank of Paris; this amount was received by us in payment of cattle sold by us to Captain Vanderpool; we have also sold to Messrs. Cerecedo Hermanos drafts for English pounds amounting to some ten thousand pounds and some shillings; during the first part of the month of March——

Q. Proceed.

A. During the first part of the month of March Mr. Palmer tried through Mr. Burset, to negotiate to us the balance of the mortgage amounting to four thousand five hundred and thirty-five dollars; inasmuch as the firm of Garzot & Fuertes did not have any
609 amount in cash and there were other people interested in the negotiation of that amount; I had in possession of the firm of Fritze, Lundt & Company a certain amount for sugar sold to them; on the tenth—on the evening of the tenth I received a telegram——

Q. Leave the details and just tell what occurred?

A. Then I sent my son José with a letter to Messrs. Fritze, Lundt & Company, with instructions to deliver to him whatever amount he might need; my son arrived here early in the afternoon for the purpose of seeing Mr. Burset for the purpose of making the payment on behalf of or in the name of Garzot & Fuertes; that is to say, the deed was drawn by Mr. Jacinto Texidor, and on account of our being too late the release was not made out, but it was finished on the following day.

Q. Did he bring back the release?

A. Yes. On the 13th when he returned he delivered to me a release in favor of Garzot & Fuertes. But there is a detail I have to inform you of: Three thousand six hundred and forty-two dollars and twenty-two cents were taken from the firm of Fritze, Lundt & Company in order to make that payment in a check against the Colonial Bank payable to bearer; also six hundred and forty-three dollars and thirty-four cents were amounts advanced to Mr. Palmer, received by him on account of the mortgage and taken on several occasions in small amounts at a time; and two hundred and forty-nine dollars forty-four cents representing the discount for the remaining five and one-half months.

610 A. (continued). The other one thousand dollars remaining in favor of Padin were due on September 2nd, 1903, which amount was taken in the Spanish Bank of Porto Rico to be delivered to Mr. Padin upon delivery of the mortgage; that ends the full payment; which releases we filed in the Registry of Property for registration and for the purpose of cancelling the mortgage for six thousand five hundred and thirty-five dollars.

A. (continued). When we purchased on the 26th of August, 1902, on the following day—on the 27th—I took to Humacao the copy of the deed to be registered in the Registry of Property. I left it there.

Q. Is that it? (Handing document to witness marked "Exhibit 13 for Defendants.)

A. (Examining same.) Yes, sir.

Q. What use did you make of this "Cercado Ramirez?"

A. To the same use to which it was devoted before, to the fattening of cattle.

Q. How long has it been devoted to the pasture of cattle, that is to your own knowledge?

A. For thirty-nine years which I have lived in Naguabo it has been devoted to raising cattle.

611 Q. Describe to us the character of the land?

A. The lowest part of it which adjoins the sea there are some thirty acres of it, more or less, good for nothing, which are under water; the balance of the property is very well developed land and the lowest part of it towards the river, the most of it, if you have a man dig the land on any part of it, the larger portion of it, you wouldn't find anything but sand washed there by the floods of the river; of course that is not so as regards the highest part of the property where it is composed of good land.

Q. How many acres are there of poor land which you speak about?

A. In the first place those thirty acres which are good for nothing; then there are three or four cuerdas along side of the river where, if you pull off the grass, you don't find anything but the sand.

Q. Give us the distance from the river back, the width of the strip that you speak of being sand when you pull up the grass. From the river running back how wide is this strip of sandy land?

A. There must be some thirty acres, perhaps over that.

Q. Of area?

A. No, in length.

Q. I have not asked you that. Listen now to my question: From the river going back how wide—how many feet back, does this sandy strip run?

A. About one hundred metres; it might be in some places more and in other places less; it might be less; but an average of 100 metres.

612 Q. What is the length of the river running through the land?

A. Over thirty acres in length.

Q. Then of the outside, how much acreage of the three hundred and fifty acres left is good land? In addition to these two pieces of bad land how much is left of the good land?

A. Taking from the whole of it 125 or 130 acres the balance is good land; and for pasture land that sandy loam place is also good. Owing to one of the floods of the river there are now on the premises some three or four large ponds of water.

Q. At the time you bought was the price you paid a high price, or a low price?

A. That was at the time when prices were lowest. I think we paid five dollars more per acre than the land was worth; taken into account those thirty acres of land which is bad and the fact that two

or three years before land had been sold around there for from forty provincial pesos and sixty Mexican pesos for lands of a better quality not affected by the waters of the river, such purchases as made by Messrs. Garzot, Villamil and Gallard, and the succession of the heirs of Argueso to whom I myself sold in 1899.

Q. From the time that Garzot & Fuertes bought have they paid the taxes on the land?

613 A. The first year that we bought, which was in August 1902, they were paid by us, that is in the name of and on behalf of Mr. Palmer, because when we purchased in the month of August the schedules for the purposes of taxation were already presented, and as they were in force from the first of July on they were already entered in his name; and from 1903-1904 and 1904-1905 they were paid by Garzot & Fuertes for the three hundred and fifty acres.

Q. Have you the receipts with you?

A. Yes, sir, here are the receipts. (Producing tax receipts.)

Counsel for Garzot & Fuertes now offers in evidence six tax receipts, four for the fiscal year 1903-1904, numbered 549, and two for the fiscal year 1904-1905 numbered 185, and the same are herewith filed and marked *"Exhibit 15 for Defendants."*

614 EXHIBIT "15," FOR DEFENDANTS.

Fiscal Year 1904–1905.

Receipt No. 185.

1st Instalment, July 1 to December 31, 1904.

Received of Garzot & Fuertes for Insular and Municipal taxes on Real and Personal Property in the municipality of Naguabo as described below:

	Dollars.	Cts.
General Property Tax at the rate of 1%	200	18
Delinquent charges for — months		
School Tax, at the rate of *of* 1%		
Delinquent charges for — months		
Bond Redemption Tax, at the rate of 1%		
Delinquent charges for — months		
Total taxes for — Instalment	200	18

Date of payment August 29, 1904.

THE TREASURER OF PORTO RICO,
By JUAN MARTINEZ, *Dep. Collector.*

Properties and Assessed Valuation.

Ass't No. 1903–1904.	Barrio.	Description of property.	Valuation.
612	Rio	Rustica 350 cds	$15,750
Total Realty			$15,750
Total Personalty			24,286
Total Real and Personal Property as assessed for taxation			$40,036

615 EXHIBIT "15," FOR DEFENDANTS.

Fiscal Year 1904–1905.

Receipt No. 185.

2nd Instalment, Jan. 1 to June 30, 1905.

Received of Garzot & Fuertes for Insular and Municipal taxes on Real and Personal Property in the municipality of Naguabo valued at $40,036, as follows:

	Dollars.	Cts.
General Property Tax at the rate of 1%	200	18
Delinquent charges for — months		
School Tax, at the rate of *of* 1%		
Delinquent charges for — months		
Bond Redemption Tax, at the rate of 1%		
Delinquent charges for — months		
Total taxes for — Instalment	200	18

Date of payment Feb. 28, 1905.

THE TREASURER OF PORTO RICO,
By JUAN MARTINEZ, *Deputy Collector.*

616 (2.)

Insular Property Tax.

Ass't No. 612. Receipt No. 549.

Fiscal Year 1903–1904.

1st Installment, July 1 to December 31, 1903.

The People of Porto Rico Received of Garzot y Fuertes in payment of Insular Taxes of one half of one per cent. on property assessed, as follows:

Real, $15750; Personal, $29846; Total, $45596, in the Municipal District of Naguabo, Barrio of Rio.

Amount received for half yearly tax.....	$113.$\frac{99}{100}$
Delinquent charges for — months.....	
Total.....	$113.$\frac{99}{100}$

Date of Payment Nov. 8th, 1903.

THE TREASURER OF PORTO RICO,
By JUAN MARTINEZ, *D'y Collector.*

617 *Municipal Property Tax.*

No. 612. Receipt No. 549.

Fiscal Year 1903–1904.

1st Installment, July 1 to December 31, 1903.

The People of Porto Rico Received of Garzot y Fuertes in payment of Municipal Taxes on property assessed as follows:

Real, $15750; Personal, $29846; Total, $45596, in the Municipal District of Naguabo, Barrio of Rio.

Amount received for half yearly General Revenue Tax at the rate of ½ of one per cent.....	$113.$\frac{99}{100}$
Delinquent charge for — months.....	$\frac{00}{100}$
Amount received for half yearly School Tax at the rate of — per cent.....	$\frac{00}{100}$
Delinquent charge for — months.....	$\frac{00}{100}$
Amount received for half yearly Bond Redemption Tax at the rate of — per cent.....	$\frac{00}{100}$
Delinquent charge for — months.....	$\frac{00}{100}$
Total.....	$113.99

Date of payment Nov. 8th, 1903.

THE TREASURER OF PORTO RICO,
By JUAN MARTINEZ, *D'y Collector.*

618 (2.)

Insular Property Tax.

Ass't No. 612. Receipt No. 549.

Fiscal Year 1903–1904.

2nd Installment, Jan. 1 to June 30, 1904.

The People of Porto Rico Received of Garzot y Fuertes in payment of Insular Taxes of one half of one per cent. on property assessed as follows:

Real, $15750; Personal, $29846; Total, $45596, in the Municipal District of Naguabo, Barrio of Rio.

Amount received for half yearly tax.....	$113 99/100
Delinquent charges for — months.....	
Total.....	$113 99/100

Date of Payment Feb. 26, 1904.

THE TREASURER OF PORTO RICO,
By JUAN MARTINEZ, *D'y Collector.*

619

Municipal Property Tax.

No. 612. Receipt No. 549.

Fiscal Year 1903–1904.

Installment, Jan. 1 to June 30, 1904.

The People of Porto Rico Received of Garzot y Fuertes in payment of Municipal Taxes on property assessed as follows:

Real, $15750; Personal, $29846; Total, $45596, in the Municipal District of Naguabo, Barrio of Rio.

Amount received for half yearly General Revenue Tax at the rate of ½ of one per cent.....	$113 99/100
Delinquent charge for — months.....	100
Amount received for half yearly School Tax at the rate of — per cent.....	100
Delinquent charge for — months.....	100
Amount received for half yearly Bond Redemption Tax at the rate of — per cent.....	100
Delinquent charge for — months.....	100
Total.....	$113.99

Date of Payment Feb. 26th, 1904.

THE TREASURER OF PORTO RICO,
By JUAN MARTINEZ, *D'y Collector.*

620 Q. The year you paid in the name of Palmer?

A. These 350 acres were not taxes separately.

Q. Do you know the "hacienda" called "San José de las Mulas?"

A. I have, on certain occasions, been on it, but I have not seen the whole of it.

Q. At any time have you rented any part of it?

A. No, sir; I have had cattle there in partnership with Mr. Rubio.

Q. What about "Culo Prieto?" Did you rent a part of "Culo Prieto?"

A. I have had it leased from 1887 up to the present time.
Q. How many acres has "Culo Prieto?"
A. Over three hundred acres.

Q. Passing by what you did then, did you have any con-
621 ference with Doña Maria at that time?

A. Yes, sir; first we agreed to pay one-half to Mrs. Petronila and her husband in $34.75, one-half of which was for them; that is to say, one-half, $17.37, for Petronila and her husband, and then I told them that I was going to see Doña Maria to lease the other half, and that if she didn't lease me the other half then the transaction was closed—would fall through. I went to Mrs. Maria's house and I informed her of the instructions I had from Mrs. Manuela, and I also told her that I had just had a conversation with her sister Petronila and had agreed to pay $17.37, and if she would agree to lease the other half that I would take the property; if not I would deliver over to her because the lease of one-half of it was not sufficient; I also agreed to pay the taxes in the same way that Garzot & Fuertes had been paying them from the beginning; she told me in reply that it was all right, that she would agree to it, that it was satisfactory to her, but that the amount of that lease belonging to her was not to be paid to her but to be kept to her account, on condition that the money should not be paid to anybody at all.

Q. The arrangement made with Doña Maria still continues?
A. Yes, sir.
Q. Has Doña Maria ever called for the payment of the amount of rental due her?

A. No, sir, because when she leased the property to me she
622 told me not to deliver the money over to anybody, and she has not yet called for it. The money is credited to her account.

Cross-examination by Mr. HERNANDEZ:

Q. Mr. Fuertes, you stated that at the time you purchased this property—at the time this property was offered to you for sale—you went to Hernandez Lopez?
A. Yes, sir.
Q. As your lawyer?
A. Yes, sir.
Q. To consult him about this property. Did you think at that time that it was a safer course to consult a lawyer about the title to this property?
A. Of course I think that a lawyer ought to give an opinion or pass upon legal papers owing to his knowledge of the law as against the ignorance of a layman.
Q. You would not have dared to purchase this property, or have taken the risk of purchasing this property, without consulting your lawyer about the title?
A. Neither that property nor any other property would I purchase without consulting an attorney of my confidence.
Q. When you consulted Hernandez Lopez did you explain to

him the litigation existing in Humacao in connection with the estate of succession of Don José María Rios?

A. I didn't know at all that there was any lawsuit.

Q. Then you didn't call his attention to that fact?

623 A. No, sir, I did not, nor do I think that there was at the time any lawsuit or litigation in which the succession or heirs were involved.

Q. To what points did you call his attention in connection with the title to that property?

A. Sir, to no point in particular; I just handed over the papers to him for examination.

Q. Please state in detail what papers you handed to him?

A. In the first place a copy of the deed to Mr. Palmer was delivered to him; then the lawyer requested that he be furnished with all the documents connected with the transactions had with regard to the property, and everything was handed over to him; that is, all the way down from the inscription or registration ordered by the Supreme Court until up to the deed of sale to Mr. Palmer, the whole involving all the transactions had in connection with the property.

Q. What transaction is that you mean—the private deed of settlement?

A. From the inscription or registration of the property in the name of Mrs. Manuela and the expediente of dominion and the order registered without any reservation by the Supreme Court; after that the sale to Burset and from Burset to Palmer; all those papers were handed over to him.

Q. Did you take over to him the private deed of settlement?

A. That was set forth in the judgment rendered by the Supreme Court, and also in the judgment rendered by the District Court.

Q. Didn't you take to him a copy of that private contract

624 of settlement?

A. No, sir; that was included in the documents themselves; that was included or was a part of the expediente; the transaction is included or made a part of the expediente which was referred or transferred to Humacao, and the whole of it forms one single piece.

Q. Did you take to him a copy of that expediente? Answer yes or no?

A. Of course he had to see everything.

Q. That is not an answer to the question; I want to know if you took to Hernandez Lopez a copy of the expediente of dominion which was filed in the District Court of Humacao?

A. Well, I couldn't tell you for a fact whether I did or not; I couldn't tell you exactly at this moment; but I can tell you this, that all the documents and papers connected with this property from the inscription of it in the name of Mrs. Manuela were handed to him.

Q. Did you take those documents to him personally?

A. No, the party who took them to him was Mr. Garzot.

Q. You had nothing to do with the taking of those papers to Hernandez Lopez, did you?

A. The party who took those documents to him was Mr. Garzot.

Q. Then what you know about those documents being delivered to Mr. Hernandez Lopez is what you learned from Mr. Garzot?

A. And I have afterwards come here and got information from Mr. Hernandez Lopez himself.

Q. And Mr. Hernandez Lopez told you the documents that had been brought to him?

625 A. He said to me that all the documents—Mr. Garzot had already told me so.

Q. But you, of your own knowledge, don't know those facts?

A. That all the documents had been delivered and he had revised them.

Q. But you of your knowledge do not know those facts?

A. I have not made delivery of the documents, but I myself went to see him about it, and in addition Mr. Garzot informed me of all the facts.

Q. And to whom did Hernandez Lopez advise that that property could be purchased?

A. First to Mr. Garzot who was here, and before the deed was executed I was at his office and he said to me the same thing.

Q. Who appeared before the notary at the execution of that deed?

A. To receive the deed?

Q. To sign the deed?

A. Mr. Garzot, because the two of us could not sign; I was also here.

Q. Were you present at the execution of that deed?

A. When part of the deed was drawn I was present; after that I left and went away.

Q. And who took that document to Humacao, you or Mr. Garzot?

A. I, on the 27th.

Q. Did you request Hernandez Lopez to examine the Registry of Property—the records of the Registry of Property?

A. No, sir, that steñ was taken by ourselves.

Q. So he didn't examine the books of the Registry of Property?

626 A. No, he hasn't gone to Humacao; he simply examined the papers he had with him wherein the entries of the Registry were set forth.

Q. Did you examine the books of the Registry of Property?

A. Mr. Garzot.

Q. Mr. Garzot, personally?

A. Yes, personally.

Q. Then you, of your own knowledge, do not know the status of the records of this property in the Registry of Property of Humacao?

A. Yes, sir, I have also seen it; at the same time that I went to record the property I looked at the facts.

Q. Did you read the entries on the books?

A. I have seen them on several occasions.

Q. Did you read the entries?

A. On several occasions; even last week I have.

Q. I mean when you took that deed to Humacao to be recorded, did you read the entries in the books?

A. I did not on that date; I have seen them before. First Mr. Garzot was there and afterwards I have also been there and examined all the entries.

Q. When was the first time that you read the entries in the books of the Registry of Property of this property? Please state the month and year?

A. I couldn't give you the month but I can the year.

Q. In what year?

A. At the first part of 1902, between March and June—the first part of 1902; I had occasion to call at the Registry in connection with other business and I, through curiosity, examined the
627 entries of that property, before I thought of buying.

Q. What motives did you have in going to the Registry of Property of Humacao to examine the entries on the books three months before it was offered to you for sale?

A. Very simple; I happened to be there one day when there was going on a certain transaction between Burset and Doña María or Palmer and Doña Manuela, I don't remember which, and I looked over the papers of the records of the Registry of Property.

Q. Do you mean to say that Palmer and Doña Manuela were in the Registry?

A. No, sir, I don't mean to say any such thing; what I mean to say is that a deed of sale from Mrs. Manuela to Burset or from Burset to Palmer was being recorded, and I happened to be there at the time and improved the opportunity to look over the records of the property.

Q. So it was by accident?

A. I took the opportunity of being there at the time to look over the records of the property in order to ascertain the situation and see to whom I had to make payment of the amount of the lease, as I had a part of it rented.

Q. But that deed didn't refer to the "Cercado Ramirez" did it?

A. To the whole property, to the six or seven properties; the number of the properties is six but they have seven names.

Q. The other times that you had been in the Registrar's office to read the records were also accidental visits?

A. No, sir; ten months or so after the purchase it was that
628 a lawsuit arose, and on that occasion I called at the Registrar's office to acquaint myself thoroughly with the status of the property.

Q. Isn't it a fact that that was the first time that you ever read the entries upon the books of the Registry of Property in connection with this property?

A. The first time was when an entry was being made of a purchase made by either Palmer or Burset, I don't know which, and afterwards when the purchase was made, and later on another occasion in August 1903 on the occasion of the lawsuit; I have been there some four of five times requesting some certificates and things of that kind.

Q. You have stated that three months before you purchased this property you read the entries in the Registry of Property of this

property. Do you remember what those entries showed in regard to this property?

A. I wouldn't say for a fact a certain number of months, but two or three months.

Q. (Last question above repeated by the Examiner.)

A. I was at the Registrar's office on the occasion of the recording or registering of the deed of sale either to Palmer or Burset, I don't remember which, and I glanced over the books to see.

Q. Do you remember what you read in the Registry of Property concerning the "Cercado Ramirez"?

A. That is what I don't understand; before the "Cercado Ramirez" passed to us all those properties were together although they had separate names, the whole was one single piece and so registered, first in the name of Doña Manuela Bustelo by virtue of a judg-

629 ment rendered by the Supreme Court.

Q. (Last question above repeated by the Examiner.)

A. First, it was registered in the name of Mrs. Manuela without any reservation whatsoever; afterwards to Victor Burset; I think that afterwards from Doña Manuela to Victor Burset.

Q. And then from Burset to whom?

A. On that day there was nothing else; that was the first inscription; it had not then been sold to Palmer.—Before I did not remember, but now I remember perfectly well that it had been transferred to Victor Burset.

Mr. PETTINGILL: And no other transfer?

A. No, the transfer to Palmer had not then been made.

(Continued by Mr. HERNANDEZ:)

Q. Didn't you notice at that time that the entry upon the Registry of Property recited that Doña Manuela had acquired that property through a private agreement of settlement entered into on the 16th of January, 1901?

A. Yes, on dominion title on account of a private agreement or settlement entered into with her two daughters.

Q. Didn't you notice that the entry upon the Registry of Property also recited the objections made by attorney Vias in the name of María Rios to these dominion title proceedings and requested the court to declare that the same had been acquired through intestate inheritance from her deceased son Don José Rios Gutman and through testate inheritance from José Rios y Berrios?

A. I do not remember.

Q. Didn't you read that in the books of the Registry?

630 A. What I read was the inscription ordered by the Supreme Court in the name of Mrs. Manuela.

Q. But you didn't read these two recitals that I have just mentioned?

A. At least I don't remember; I could not tell you yes or no; I could not tell you what I don't remember.

Q. If you had read those particular points that I have mentioned to you would you have purchased this property?

A. As I said to you before, I do not know anything about those

matters; I submit myself to whatever the attorney or counselor advises me to do.

Q. But Hernandez Lopez didn't go to Humacao to examine these records?

A. No, sir, Mr. Hernandez Lopez has not gone to Humacao, but all the documents in connection with the matter have been brought to him.

Q. You mean all the deeds?

A. And also what resulted from the expediente of dominion and that transaction; they all came to his possession.

Q. But you didn't bring the books of the Registry of Property?

A. No, sir, the books of the Registry of Property were not brought to him but the documents and the deeds delivered to him had set forth everything recorded in the Registry of Property.

Q. Didn't you know at that time that property inherited by a mother through intestate inheritance from her deceased son had to be reserved by her to the other children of that marriage?

631 A. I am not acquainted with the laws; I do not know anything about that; if I had studied the law as you have I would give you an answer to that.

Q. Didn't Hernandez Lopez advise you concerning that?

A. No, sir, he did not have to; that was conducted as the result of a settlement; I do not think that property was registered in the name of anybody before.

Q. Did you read that private agreement of settlement before you purchased this property?

A. No, I have not read it.

Q. Was it not a public rumor in Humacao—in that district, the long-standing litigation between Doña Manuela Gutman and her daughters of the first marriage?

A. I do not think that they have even had any litigation among themselves; as I understand I do not think the daughters have had any lawsuits with the mother; in fact, I do not know anything about that matter and my opinion is that there was no such litigation; endeavors were made to start it but the transaction put an end to it.

Q. Then what was your idea of the motive of that private agreement of settlement which was the basis of the dominion title proceedings?

A. I understand that that private agreement was the result of a complaint filed by the two daughters against the mother requesting delivery to them of the portion of the property belonging to them.

Q. Then you knew that claims had been made by the

632 daughters against their mother for their share of the property?

A. I knew that they had made a claim against their mother, because the transaction had between the mother and the daughters was a matter of public rumor.

Q. It was publicly known in the district, in that vicinity, that the mother and her daughters had made a private settlement?

A. That an agreement had been entered into between them.

Q. How long prior to the purchase of the "Cercado Ramirez" by

you did you learn of the demands made by the daughters of Doña Manuela upon her for the delivery of their properties?

A. Not the daughters; that Doña Maria demanded of Doña Manuela the delivery of "Culo Prieto"; Mrs. Manuela ordered that the finca "Culo Prieto" be delivered to the daughters; that is all; the orders were given by her that the properties be turned over to them.

Q. How long prior to the purchase of the "Cercado Ramirez" did you learn of that fact, more or less?

A. Some two or three months before the purchase, in April or May I went to Humacao to treat with them and come to an understanding with regard to the lease.

Q. Did you speak with Doña María Rios in regard to the claims that she was making upon her mother for her properties?

A. I have not gone to Doña María for that purpose. What I said to her was this: "Mrs. Manuela has ordered that the estancia
633 "Culo Prieto" be turned over to you and Mrs. Petronila; I come here—I have just come to see your brother-in-law and your sister and have agreed to lease from them half of the property for $17.37"; and I asked her if she would agree to lease me the other half, because I would not want part of it, but the whole of it, and she said to me that it was all right.

Q. About that time did you consult some of your friends as to the advisability of purchasing the "Cercado Ramirez"?

A. No, sir.

Q. Didn't you speak to any of your friends and propose to him to buy this property?

A. No.

Q. Don't you remember having talked with Mr. Oyanguren about it?

A. No, sir, Mr. Oyanguren has not spoken to me with regard to that matter. At the beginning of this year Mr. Oyanguren went to Naguabo in connection with that central, "San Cristobal," looking for "colonas" for their plantation, and I answered him that I did not have sugar cane land, but that if Mr. Garzot would lease to me some lands which we (Garzot & Fuertes) have devoted to cane, and if the lawsuit then pending came to an end and I could then use the entire part of the three hundred and fifty acres, then I would agree to plant cane for him. Mr. Garzot refused. Then I commissioned Mr. Oyanguren to go and see Mr. Villamil of Rio Grande to
634 see whether or not he would lease to me the plantation "Santa Rosa" which is adjoining the "Cercado Ramirez"; Mr. Oyanguren himself went there and failed in his endeavors.

Q. Do you know whether your partner, Mr. Garzot, discussed the advisability of purchasing "Cercado Ramirez" with Mr. Oyanguren?

A. I do not know anything, but I would dare to swear that there had not been such discussion between the two.

Q. That oath that you are willing to make is not based upon any personal knowledge that you have of that interview?

A. No, sir.

Q. You could not swear if they had it or not, could you?

A. But I am almost sure that they have not, because I know perfectly well one party, and particularly my partner who has worked together with me for thirty years.

Q. Well, if I state to you that Mr. Oyanguren has testified that he did talk with Mr. Garzot about it, what would you say?

A. Well, it would have been long before Garzot & Fuertes purchased this land.

Q. You say it was before the purchase of the "Cercado Ramirez" by Garzot & Fuertes?

A. Four or five years ago Mr. Oyanguren went there and called upon Doña Manuela to ask her if she would not lease—that is not sure—but I think he has; Mr. Bass has also called during the time that she was manager of the property—she had the management of the property for herself and the children.

Q. Didn't you think at the time you purchased the plantation "Cercado Ramirez" that that was a very low price?

635 A. No, sir; on the contrary I thought that I paid five dollars more than it was worth, because my opinion is that the property was not worth more than forty dollars per acre, and that simply on account of being adjoining the other property that I had leased.

Q. Is it not a fact that the quality of the land of the "Cercado Ramirez" is one of the best in that district?

A. Part of it, yes; not better—there are other lands there better than "Cercado Ramirez;" there is a portion of the Garzot property that is better, in view of the fact that it is not troubled by the floods of the river.

Q. What part of the "Cercado Ramirez" do you consider the very best land?

A. Some thirty acres situated at the place where the dwelling house is located, and from there some twenty acres planted in cane for the reason that this is not at all interfered with by the river.

Q. How long has that property been planted in cane?

A. It was planted last year and cane has been cut this year; it was plowed preparatory to planting rice.

Q. What is the value of an acre of that property—the best part—those thirty acres?

A. They may be worth fifty dollars per acre.

Q. Fifty dollars per acre, of that thirty acres?

A. Yes; rather they were worth that much.

Q. But to-day?

A. At present they are worth more on account of the central which is located less than a kilometer from it. I have been notified by the Treasury Department (as by document exhibited) that

636 the valuation of the property is increased for this year; three hundred and twenty acres valued at one hundred dollars per acre and thirty acres at twenty-five dollars per acre; in other years they were assessed at a proper value, but now the assessment has been increased, because the working of the property has caused other properties to increase in value and others to decrease. That is only

the opinion of the assessor; the same increase has been made on lands of other adjoining owners.

Q. What is the value of the "Cercado Ramirez" to-day?

A. There are three hundred acres valued at one hundred dollars per acre and thirty acres valued at twenty-five dollars per acre, making a total of thirty-two thousand seven hundred and fifty dollars.

Q. Then do you think that the properties in that district, not the "Cercado Ramirez," have increased more than fifty per cent. from 1902 to this year?

A. No, sir, I do not think so; that is the opinion of the tax-assessor.

Q. You have testified that all the other properties have been increased up to one hundred dollars per acre?

A. Yes, based on the fact that a central has been erected there and that the price of sugar has gone up; but if at some future time that property happened to be destroyed the value of that property would be the same as it was long before, particularly if you take also into consideration that a great portion of that land could not be devoted to cane because if they were sown the seeds and the soil would be washed down into the ocean.

Q. Outside of those thirty acres you have mentioned, the rest of the "Cercado Ramirez," what is it worth per acre?

637 A. My opinion—I say so conscientiously—I have sworn here to tell the truth and I ratify my oath—the acre was worth forty-five dollars, which was the purchase price.

Q. What is its value to-day?

A. I couldn't tell you exactly; that depends upon whether or not the price of sugar continues as at present and whether or not the central now in course of construction is a success, that is, that it does not fall through; of course I estimate that it is worth a little more but not as much as the assessor has put it.

Q. In your opinion what is the fair valuation of that property to-day?

A. Outside of the thirty acres before referred to I think they are worth seventy to seventy-five dollars per acre.

Mr. PETTINGILL: Which thirty acres?

WITNESS: The thirty acres of the Poyal, under water; the part of the marshy lands, which, with or without central, they are not worth a cent.

Q. What, in your opinion, is a fair valuation per acre of the portion planted with cane?

A. For that portion, more or less, the same thing, seventy to seventy-five dollars per acre; and I have figured the whole of it at from seventy to seventy-five dollars per acre; considering that strip of Sandy loam alongside of the river figure the whole thing at seventy dollars, in view of that sandy strip.

Q. Is the whole property good for cane planting?

A. No, sir.

Q. How many acres of it?

638 A. There might be approximately some two hundred acres, and perhaps not so many.

Q. Then you estimate an acre of cane land at seventy dollars only. That is, in your opinion, a fair valuation?

A. And that is still a little high.

Q. Isn't it a fact that land proper for cane planting in that district, in that vicinity, has been sold at one hundred and twenty-five dollars per acre?

A. Let us clear up that point: I understand that some twenty acres have been sold where the central is to be located; I know that it has been sold at a good price, but I do not know for a fact that it was one hundred and twenty dollars or ninety dollars; my opinion is that it was sold for ninety dollars.

Q. Mr. Fuertes, would you sell this plantation "Cercado Ramirez" at the price of seventy dollars per acre to-day?

A. To-day? Of course I would, provided that I was to be paid back what I have been paid for it. Of course I speak of my own share, not the balance. Yes, sir, I would sell half of it—my share; I would sell half for that price.

Q. You are one of the defendants in this case, are you not?

A. Unfortunately so.

Q. What would be the result to you of the loss of this case?

A. And even if the case is won the question is "How much would I lose even if it is won?"—the losses sustained by being away from my business; I lose, winning.

Q. You know that a great deal of your success or failure of this suit depends upon the value that you place upon this property
639 at the time of this purchase, do you not?

A. No, that I do not know; I do not think that has anything to do with it.

Q. Don't you think that the fact that you paid forty dollars per acre for this property in 1902, if it was worth eighty dollars per acre, would be a very important fact in connection with this case?

A. Let me explain: Instead of forty dollars, which is what we ought to have paid, we paid forty-five dollars, and it was not worth more; if it was worth eighty dollars, as I am asked, that would not be a proper cause or reason, because the value of a property depends on individual circumstances; you don't have to go very far to find an example of that: Last year Mr. Ubarsi sold the finca "Las Mongas" for fifty-one thousand dollars, and the deed was drawn raising the value of the property over one hundred thousand dollars, the area being about thirteen hundred to fourteen hundred acres, the property containing good buildings and sheds.

Redirect examination by Mr. PETTINGILL:

Q. Where is Don Juan Garzot now?

A. In Barcelona, if he hasn't left there.

Q. He is in Europe?

A. Yes, sir.

Q. How long has he been there?

A. Next September will be two years.

Q. At the time you bought this "Cercado Ramirez" did you know

of any disagreement or any suit in prospect over it, after the final sentence of the Supreme Court?

640 A. With whom?

Q. With anybody, touching the title to the "Cercado Ramirez?"

A. No, sir, I didn't know anything; nothing, absolutely.

Witness excused.

(Interpreted:)

SATURDAY, *July 8th*, 1905.

DON JUAN HERNANDEZ LOPEZ, witness called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your name?

A. Juan Hernandez Lopez.

641 Q. What is your profession?

A. Lawyer.

Q. How long have you practiced your profession?

A. Since 1881.

Q. And where have you practiced?

A. Constantly in the Island of Porto Rico before its courts, both under the Spanish domination and under American rule.

Q. Do you know the defendants Juan R. Garzot and Faustino Fuertes?

642 A. They are friends of mine and clients.

Q. Were you consulted by them in 1902 about the purchase of certain property in Naguabo?

A. Yes, sir.

Q. What property was it?

A. I desire to make an answer preparatory to the reply. In 1902, in the summer time—I believe in the month of August——

A. (Continuing:) A finca situated in Naguabo known by the name of "Cercado Ramirez." I believe in the month of August I was consulted about——

A. (Continuing:) I was consulted by Señor Juan R. Garzot as an active partner of the mercantile firm of Garzot & Fuertes, regarding the acquisition of a property situated in Naguabo known as "Cercado Ramirez" which they desired to purchase and was offered to them for sale by Don Santiago R. Palmer, resident, and a notary of San Juan.

Q. State fully what papers were submitted to you by Garzot & Fuertes and the examination you made of the title to the property, and the advice you gave them with regard to it?

A. Mr. Juan R. Garzot, representing Garzot & Fuertes, called at my office and made the following consultation: Mr. Garzot said to me——

Q. Without repeating the conversation give the effect

643 of it?

A. Mr. Garzot said to me——

Q. It is better to confine your testimony to the papers submitted,

the examination made of them, and what you said to Garzot, without stating what Garzot said to you.

WITNESS: I would desire to state simply what the consultation was.

Q. State it in your own way.

A. Mr. Garzot said to me that he desired to purchase that estate "Cercado Ramirez"——

A. (Continuing:)—offered to him for sale by Mr. Santiago R. Palmer, and he expressed his desire that I examine the title to the property held by Mr. Palmer in order that I tell him whether or not it was a legal title sufficient for Mr. Palmer to be able to sell him that estate; he handed over to me the title consisting of a deed—a deed of transfer of property rights executed by Mr. Victor Burset in favor of Mr. Santiago R. Palmer, which deed had a footnote setting forth its record in the Registry of Property; I said to Mr. Garzot that I desired to see the title prior, preceding that one, that is to say, the title of Mr. Burset, as well as the title held by the party who transferred the property to Mr. Burset, or the title of Mrs.
644 Manuela Gutman; Mr. Garzot did not at the time have those documents with him but he promised to bring them to me right away; after some time—I don't remember whether it was the same day or the following day—he came back to my office with the titles requested by me, that is to say, he brought with him the title of Mr. Burset and a copy certified to by the Secretary of the Supreme Court of Porto Rico of a judgment rendered by the said court, dated June 4, 1902; having those documents in my possession I then said to Mr. Garzot that I needed a day or two to study them; Mr. Garzot came back to my office two or three days afterwards and then I said to him: "Mr. Garzot, I have examined the titles, I have made a careful examination of them, and I find that the sentence of the Supreme Court approving the aforesaid expediente of dominion, and recorded as a dominion title in the Registry of Property, constitute, in my judgment, a complete and finished title in favor of Mrs. Manuela Gutman in so far as refers to the properties recorded in her name, which title conforms absolutely to the provisions of the Mortgage Law; I am therefore of the opinion that Mrs. Manuela Gutman was able to transfer the property "Cercado Ramirez" as well
645 as all the other properties recorded in her favor to any person whatsoever;" that therefore the title held by Mr. Burset was also a perfect and an entirely legal one, and likewise the title of Mr. Palmer; "all these deeds and the records thereof made in the Registry of Property conform to all the requisites of law, both internally and externally, in conformity with the Civil Code of Porto Rico, Notarial Law and Mortgage Law, in so far as the bargain and sale contract of real property both as to the capacity of the contracting parties as well as to the property contracted for, as well as to the consent given and its legal form;" and that therefore, finally, my opinion was that Messrs. Garzot & Fuertes were perfectly free to acquire the said property of Mr. Santiago R. Palmer, provided, of course, it was convenient to their interests, regardless of any other limitation to that right except that appearing in the Registry of

Property; and that therefore by their purchasing that property they were, as they could not fail to be, considered under the law, as third parties, purchasers in good faith under the guaranty of the Registry of Property and of the provisions of the law governing the same. This was the reply I gave to Mr. Garzot, which reply I reiterated and repeated on the following day, or the day after, to Mr. Faustino Fuertes, also active partner of the mercantile firm of Garzot & Fuertes aforesaid, who came to my office to have me explain to him the reply that I had given to his partner Mr. Juan Garzot in order to acquaint himself with it, as well as the details of the consultation had by Mr. Garzot with me.

646 Q. During any of those consultations either with Mr. Garzot or Mr. Fuertes, did they refer in any way to any pending dispute over the title either of Doña Manuela Gutman or succeeding owners?

A. No, the consultation was limited to the legal sufficiency of the titles handed over to me and to the capacity of the parties appearing thereon as owners; no other question was entered into by them.

Cross-examination by Mr. HERNANDEZ:

Q. Please state in detail how many deed- were brought to you and submitted to your consideration by Mr. Garzot?

A. The title held by Mr. Palmer; the title of Mr. Burset, and the title of Doña Manuela Gutman; or, in other words, a certified copy of the sentence rendered by the Supreme Court recorded in the Registry of Property.

Q. So there were three titles submitted to you and nothing more? Are you sure?

A. Nothing else.

Q. Are you sure that no other document was submitted to you?

A. No more.

Q. You can swear to it?

647 A. I have already sworn to tell the truth.

Q. Did you go to Humacao?

A. I have never been in Humacao.

Q. Did you examine the Registry of Property of the district of Humacao?

A. No. I only examined the future entries made at the end of the deeds regarding the recording of the instrument in the Registry of Property.

Q. Then you could not know or advise your clients of the status of the record of the "Cercado Ramirez" upon the books of the Registry of Property of Humacao?

A. I had before me the aforesaid titles recorded in the Registry of Property, and they were sufficient for me for the purposes of the consultation made to me, which was to say to my clients whether or not the said titles were legal and sufficient for the purpose of transferring the title of the said properties.

Q. Do you mean to say, as a prominent lawyer, that upon the notarial deeds alone, without searching the inscription made of the property upon the books of the Registry of Property, you can find

out whether there is any flaw in the title and the history of that property?

A. I affirm that the document or title recorded in the Registry of Property wherein there is set forth an annotation of its having been recorded in the Registry of Property, duly authorized by the Registry of Property, is, by itself, sufficient to give an opinion as to the validity and legal sufficiency of that title without the necessity of going to the Registry of Property for that purpose alone, for the reason that in the Registry of Property dominion titles
648 to real estate are not set forth, but simply in so far as its recording, and the liens or incumbrances which those same real properties may have, and for that reason the law governing the registry of property is called "Mortgage Law" and not "Property Law."

Q. Then what would be the effect upon the title of a flaw appearing upon the books of the Registry of Property and yet not appearing from the title deeds themselves?

A. That could not be; if there is any defect or any flaw in the Registrar's books the same have to appear in the deeds for the reason that if the title is defective the Registrar will not record it, and if he does it is because the error is amendable, and he thus sets it forth in the entry which he writes out at the end of the deed itself; and I must add to this that the lien or incumbrance of any property has nothing to do with the validity and sufficiency of a title, because a property may be mortgaged one or twenty times, it may be entered in the Registrar's books with attachments, and yet the title may be perfectly legal and sufficient for its owner to make a transfer of the property, with the only difference that in making the transfer he makes the transfer with the liens and incumbrances weighing upon the property, and which appear from the books of the registry.

Q. I am reading now from "Exhibit K" for the Complainant, which has been introduced in evidence, and I ask you whether you read, or knew, at the time of the consultation you have mentioned, the inscriptions appearing on folio 39 of Volume 9 of the Municipality of Naguabo, referring to No. 2 of Property 451, which is the "Cercado Ramirez," and appearing on pages 6 and 7, 8, 9 and 10 of said Exhibit?
649 A. Absolutely no.

Q. Did it appear upon the title of Señor Palmer, upon the title of Burset, or upon the title of Doña Manuela, which was exhibited to you, that this property was acquired by Doña Manuela through intestate inheritance from the deceased son of her first marriage, José Rios y Gutman?

A. What appeared from those titles is that Doña Manuela Gutman acquired the title of that property by means of an expediente of dominion approved by judgment of the Supreme Court, which judgment was recorded in the Registry of Property; nothing else appeared.

Q. Did it appear upon those three titles which were submitted to you that Doña María claimed the "Cercado Ramirez" as one of her properties by virtue of the right of reservation vested in her?

A. It appeared from the certified copy of the judgment of the Supreme Court of Porto Rico submitted to me, that Mrs. María Rios had opposed the expediente of dominion before the District Court of Humacao, which opposition was dismissed by the District and by the Supreme Court of Porto Rico.

650 A. No.

Q. Did it appear upon those three titles submitted to you that Doña Manuela had acquired this property by virtue of a private agreement of settlement which was the basis of the expediente of dominion, although the property was already vested in her through intestate inheritance from her deceased son José Rios y Gutman?

A. It did not appear in the manner suggested to me.

Q. In what manner did it appear?

A. In one of the findings of the judgment rendered by the Supreme Court of Porto Rico, and in another one of the findings of the judgment rendered by the District Court, included in the Supreme Court's judgment, reference is made to a private agreement entered into by Mrs. Manuela Gutman and her daughters Maria and Petronila in regard to a division of property among them, and the adjudication to each of the contracting parties of certain properties, by virtue of which agreement the interested parties themselves instituted the expediente of dominion upon which those sentences or judgments of the court were rendered.

Q. Did it appear upon those three titles submitted to you that Doña María Rios claimed this property as "bienes reservables" and requested the court to inscribe it with such reservation upon the Registry of Property?

A. Part of the statements made in the question do appear, but not in the shape or manner stated in the question.

Q. What statements appear upon those deeds?

A. In the sentence of the Supreme Court aforesaid it ap-

651 pears that Mrs. María Rios made opposition to the approval to the expediente of dominion requesting that the properties which had to be recorded in favor of Mrs. Manuela Gutman be recorded as reservable property; and it also appeared that the Supreme Court denied that opposition and ordered that the properties of Mrs. Manuela Gutman be registered without any reservation or limitation whatsoever.

Q. All that was done in the dominion title proceedings?

A. I have not seen the expediente of dominion; I have only seen the certified copy of the sentence of the Supreme Court of Porto Rico to which I have referred.

Q. Was that judgment or decision of the Supreme Court of Porto Rico submitted to you together with the other three titles?

A. The certified copy of the judgment rendered by the Supreme Court duly authorized by its Clerk and recorded in the Registry of Property was presented to me as the basic title of the other titles submitted to me and which were the subject of the litigation.

Q. What would you say then if I stated to you that upon the books of the Registry of Property of Humacao appear all those statements that I have just made to you? (Question repeated.)

A. I wouldn't say anything.

Counsel for complainant calls the attention of the court to pages 6, 7, 8, 9 and 10 of said "Exhibit K."

Q. You don't think they are material, do you? You don't pay any attention to them?

652 A. I do not give any importance to them in so far as it refers to the consultation had with me by Messrs. Garzot & Fuertes. And I would say something in addition to that, as a courteous reply to the question propounded to me by the attorney, that my opinion is as an attorney, and owing to the study which I have made of the Mortgage Law, I am of the opinion that a third party has nothing to do with controversies or questions made by the owner of the property in regard to property rights and interests therein unless those claims or controversies appear upon the books of the Registry of Property by way of limitation made upon the property.

Q. Then as a corrallary of your answer, when it appears upon the books of the Registry of Property, that third party has something to do with it, has he not?

A. It depends on the form or manner in which it appears; if it appears in the shape of an inscription or annotation in accordance with law, for instance, if an inscription of a mortgage or censo appears, or if a preventive entry prohibiting its transfer or *lis pendens* appears, then the title to the property, if it is transferred, is understood as having been transferred either with the mortgage or subject to the responsibility of the entry.

Q. Did you inform Mr. Garzot and Mr. Fuertes that it appeared upon those titles submitted to you that Doña Maria claimed that property as "bienes reservables"? Did you?

653 A. The statements contained in the question propounded to me are not correct in so far as Doña Maria has made such claim; I have already stated what appeared from the judgment rendered by the Supreme Court which was an opposition made by Mrs. Maria to the expediente of dominion on the ground already stated, and in regard to such matters the consultation did not treat upon such questions, because the consultation was limited as to whether or not a dominion title was sufficient and legal for the purpose of the owner of the property being able to transfer the property legally to Messrs. Garzot & Fuertes.

Counsel for complainant requests the Examiner to read to the witness the question which was put to him as to that statement appearing upon the titles or documents submitted to him.

The following question appearing on page 69 was repeated to the witness:

Q. "What statements appear upon those deeds?"

And the answer to the same appearing on page- 69 and 70 was read to the witness.

Likewise the following question appearing on page 71 was repeated to the witness:

Q. "Did you inform Mr. Garzot and Mr. Fuertes that it appeared

upon those titles submitted to you that Doña María claimed that property as 'bienes reservables?' Did you?"

654 And the answer to the same appearing on pages 71 and 72 was read to the witness.

Mr. HERNANDEZ: Do you want to rectify your statements?

WITNESS: No, sir.

Q. Then, let me understand clearly whether it appeared upon the documents submitted to you that Doña María Rios had claimed the "Cercado Ramirez" as her "bienes reservables," and that they should be inscribed as such?

A. What I have stated in my prior reply is all that appeared.

Q. Did it appear that Doña María Rios opposed the dominion title proceedings and requested that the properties be inscribed as "bienes reservables?" Answer "yes" or "no."

A. My reply is that what appeared is what is stated in the certified copy extended by the Supreme Court of Porto Rico, which is one of the Exhibits presented in this case.

Q. Mr. Hernandez Lopez, you are an intelligent witness and a prominent lawyer, and you know very well that this answer you have given me is evasive, and I ask you to please state whether or not it appeared upon the decision of the Supreme Court of Porto Rico which was submitted to you that Doña María Rios opposed those proceedings and requested that the properties mentioned in said proceeding be inscribed as "bienes reservables?" Please answer yes or no.

A. I do not wish to evade——

Mr. PETTINGILL: Counsel for defendants here desire to state that they have refrained from objecting to the long series of

655 questions propounded by counsel for complainant which have called upon the witness for numerous expressions of his legal opinion, because the Examiner not having power to rule upon the admission of testimony, and the defendants not objecting to the expression of opinion of the witness if desired by counsel, now object upon the ground that such questions are wholly impertinent, call for no answer as to facts, but that what appears in the final sentence of the Supreme Court is best shown by that document itself, which, as just stated by the witness, is already before the court for its interpretation.

Q. (Last question above, being the last question on page 73, was repeated to the witness.)

A. I am not trying to evade the question; my endeavor is to try and not to have the question make me incur any contradiction, because if I do reply to it "yes" or "no" as requested I may unwillingly fail to tell the truth, and in order that the truth may appear only I would say the following for the second time: That from the said sentence of the Supreme Court it appears in one of its findings that Mrs. María made opposition to the approval of the expediente of dominion asking that the properties or estates which were to be recorded in favor of Mrs. Manuela Gutman be recorded with an annotation to the effect that they are reservable properties,

which opposition was denied by the District Court of Humacao and by the Supreme Court itself, ordering that the expediente be approved and that the registration be made in favor of Mrs. Manuela Gutman without reservation or limitation whatsoever.

656 Q. Did you inform Garzot & Fuertes of the claims and opposition made by Doña María Rios, which you have just mentioned? And to which you gave so little importance?

A. The fact that I did not give any importance to it was the reason why I did not inform Messrs. Garzot & Fuertes of it, in addition to the fact that Messrs. Garzot & Fuertes were able to read by themselves all the documents which they presented to me, as I suppose they did.

657 Witness excused.

DONA PETRONILA RIOS DE NOYA, witness called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. ANTONSANTI:

Q. What is your name?
A. Petronila Rios.
Q. You are a defendant in this case, are you not?
A. Yes, sir.
Q. Where did you live in January 1901?
A. In Humacao.
Q. Were you living in Humacao on the sixteenth of January, 1901?

A. Yes, sir.

658 Q. Do you remember having signed on that day—on the night of that day—a document taken to your house?

A. Yes, sir.
Q. You can state who took that document to your house?
A. Mr. Landrón, Lawyer Cuadra, Manuel Argueso and Jesus Almiroty.
Q. Was that document read to you or did you read it yourself?
A. It was read to me and I read it myself.
Q. Did you sign it spontaneously?
A. Yes, sir.
Q. Do you know what was done with that document after you signed it?
A. No, after I signed it I don't know what was done with it.
Q. Please tell me what that document referred to in general terms?
A. I don't recollect everything.
Q. In general terms.
A. One of the things that I remember was that the capital was to be divided into three parts, one for my sister Maria, another for my mother and another for myself.
Q. After you signed that document on the sixteenth of January,

1901, did you ever after that have any conversation with your sister María regarding that same document?

A. No.

Q. Do you remember what signatures appeared at the foot of that document at the time of your signing it?

A. The first signature was my own.

Q. Did you ever see that document after that?

659 A. No. I don't remember if I saw it again; I know that I signed it.

Q. Are you positive that María never spoke to you about that document after you signed it?

A. No, I never had with her any kind of friendship.

Q. Do you remember having signed any other document after that transaction, that agreement?

A. Yes, sir, I believe that two days after that I signed another document.

Q. Just look over this (handing document to witness) and see if that is the document you signed a few days later (the document being marked "Exhibit 3 for Defendants.")

A. Yes (examining document) there is my signature.

Q. More or less, see if you can recollect how long after the signing of the first document on the sixteenth of January you signed this one?

A. I know it was a few days later but I could not remember exactly the time.

Q. Do you remember the time of day it was?

A. No, neither.

Q. In the morning or the afternoon or the evening?

A. No, that I don't remember.

Q. Do you remember who brought the document to you for signature?

A. Mr. Cuadra.

Q. Before signing that document on the sixteenth did you ever have any conversation with your sister Maria which led to the signing of that private contract?

660 A. I repeat that I never had any conversation with her about it.

Q. Who attended to your business affairs at that time?

A. My husband.

Q. After you signed this contract of transaction on the sixteenth of January do you remember having gone to any of the notarial offices in Humacao?

A. Yes, sir.

Q. How long after was it that you went to a notary's office?

A. That I do not remember.

Q. The number of days, more or less?

A. No, I don't remember.

Q. Do you know for what purpose you went there?

A. Yes, sir, in order to sign before the notary the contract we had entered into.

Q. Who were there present at that time?

A. In the house of Aldrey the notary, Cuadra, and I don't remember what other persons there were present; there were a few others but I don't remember who they were.

Q. Can you tell me what happened in the office of the notary?

A. When we got there the notary told us we could not sign.

661 Q. Did he give any reason why?

A. Because María didn't want to sign.

Q. Did you see María, or do you know whether she was at the notary's office at that time?

A. No.

Q. Do you know that she was not at the notary's office?

A. No.

Q. Do you remember who it was that was sent to Doña Maria's house to see if she would come to sign?

A. No. It seems to me that it was Cuadra, but I don't remember.

Q. Did you see Cuadra go out of the office while you were there?

A. It seems to me that it was Cuadra; I saw him when he got up but I don't know.

662 Q. Were you ever offered by any one, or have you ever received any reward or offer for having signed that private contract on the sixteenth of January other than whatever was adjudicated to you in the same?

A. Absolutely nothing.

Q. During the year 1902 did you or did you not acquire a tract of one hundred acres of land called the "Cercado Maldonado?"

A. Yes.

Q. Do you remember under what conditions that one hundred acres was purchased by you and how?

A. Well, with the money.

Q. Whose money was that?

A. From my own savings, from my cattle that I had with Don Ricardo Rubio in the estate "Mulas," and with the work performed by my husband for a long time; and also my husband had money because he worked for a long time in the warehouses.

Q. Who was it made the payment for that farm?

A. My husband.

Q. Do you know where he made that payment, in Humacao or elsewhere?

663 A. Here in San Juan.

Q. Do you know of your own knowledge that he came to San Juan with that money?

A. Yes, sir.

Q. How much did you pay, do you remember, for that farm?

A. Four thousand and some odd dollars; I don't remember the exact amount; I think it was four thousand dollars.

Q. Where did you keep that money before you handed it to your husband?

A. In my wardrobe.

Q. Did Doña María, or through her lawyer or any representative,

ever propose to you to combine with her to set aside some of those deeds and transactions?

A. She proposed that to my husband and to my lawyer.

Q. Did any representative of Doña María talk to you personally about this combination?

A. No.

Q. No representative of Doña Maria ever came directly to you?

A. No, directly, no.

Q. Did it ever come to your knowledge that Doña María dispensed with the services of Mr. Cuadra as her attorney?

A. Yes.

Q. Now, after that, did you continue to employ Mr. Cuadra as your attorney?

A. Yes.

Q. And he followed your instructions satisfactorily to
664 you?

A. Oh, yes, everything.

Cross-examination by Mr. HERNANDEZ:

Q. Doña Petronila, what relation are you to Doña Maria?

A. I am her full sister.

Q. Are you a daughter of your mother's first marriage?

A. Yes, sir.

Q. Have you always lived together with her?

A. No.

Q. Since when have you lived apart from her?

A. Since María married.

Q. When was that?

A. That I don't remember either; it was many years ago.

Q. At the present time do you visit her?

A. No.

Q. From that time to the present have you been visiting her frequently?

A. No.

Q. Have you ever visited her at all?

A. No.

Q. Are you on friendly terms with her?

A. No.

Q. Do you speak to her?

A. No.

Q. Do you entertain any personal feeling against her or do you have any complaint against her?

A. Yes.

Q. Are those personal feelings or complaints based upon any property rights or claims made by you?

A. No.

665 Q. Does she owe you any money?

A. No. She owes me my rents.

Q. In other words, you are claiming from her certain amounts of money, are you not?

A. Yes, sir, judicially.

Q. Have you instituted suits against her in the District Court of Humacao?

A. She is the one that brought suit against me.

Q. Have you not brought a suit against her?

A. I have brought a suit against her now in order to make her pay me my rents.

Q. You have spoken here of a certain document which you signed; do you know, or do you remember what was the object of that document?

A. The declaration which I have given is that which I have given now.

Q. But do you remember having signed a certain document on January sixteenth, 1901?

A. Yes.

Q. Do you remember what was the object of that document?

A. That was for the purpose of dividing the capital into three parts.

Q. What capital?

A. The one that was left by my father.

Q. By Don José María Rios?

A. Yes.

Q. In whose possession was that capital up to that date?

A. It was administered by my mother.

Q. And from the time of the death of your father to that
666 date she had not delivered to you your share in the inheritance?

A. No.

Q. Why was that?

A. Because I had not as yet asked for it.

Q. Do you remember if the properties left by your father were the object of testamentary proceedings in Humacao?

A. That I don't understand.

Q. Why didn't you ask for your share of the inheritance up to that time?

A. Because I didn't want to ask for it.

Q. And who suggested to you at that time the idea of asking for it?

A. Nobody.

Q. It was prompted by yourself?

A. Yes, sir.

Q. Are you sure that the object of that document was not to put an end to difficulties and troubles between you and your mother?

A. Between my mother and myself there were never any difficulties, only that I asked for my share of the inheritance and she said that I should ask for it judicially.

Q. But don't you remember at that time that the document recited that it was to put an end to all the difficulties and controversies which had existed between your mother and you and Doña Maria?

A. I signed it so that we should not be in need of any litigation.

Q. Why? Did you fear any litigation?

A. You know that in these things they always originate.

667 Q. Did you expect any suits at that time?

A. No, I didn't expect them, but they might have come.

Q. You said that between you and your mother there was never any difficulty or trouble?

A. No.

Q. What about between your mother and Doña Maria?

A. Oh, yes, a great many.

Q. Were there long-standing controversies and difficulties between Doña Manuela and Doña Maria?

A. They were always in litigation but I don't know why.

Q. Was she claiming her properties from the inheritance of her deceased father?

A. I don't know; I don't know what they were litigating for.

Q. Do you know whether she had requested her mother to deliver to her her share of the inheritance?

A. That I do not know.

Q. Was this litigation *a* controversy between Doña Manuela and Doña Maria a matter of public knowledge in Humacao?

A. Oh, yes.

Q. Was it notoriously known in the town that there were controversies and difficulties between them—between Doña Maria and Doña Manuela?

A. Yes, sir.

Q. Did you ever receive, up to that time, January 16th, 1901, anything from the inheritance of your father?

A. No, nothing.

668 Q. Do you know if Doña Maria did?

A. I don't know.

Q. You have stated that between your mother and you there was never any difficulty or controversy?

A. Yes.

Q. Do you remember having employed lawyer Cuadra to appear on your behalf in the testamentary proceedings of your father?

A. Yes, because Cuadra was in friendship with my mother; she asked me to do so.

Q. You mean to say that Doña Manuela, your mother, requested you to appoint Cuadra as your attorney at law to represent you in the testamentary proceedings?

A. No, she didn't indicate it; she did not indicate that I should appoint Mr. Cuadra my lawyer.

Q. Did she suggest any lawyer to you?

A. No.

Q. Who suggested lawyer Cuadra to you?

A. Myself.

Q. Did you speak to him?

A. Yes.

Q. Did you send for him at his office?

A. Yes, my husband brought him over to my house.

Q. And you spoke to him about appearing on your behalf in the proceedings?

A. I went with him over to my mother's house as I wanted to fix things friendly, and she begged me to do it in a judicial manner.

Q. You have just said that you wanted to fix things friendly. Why did you use the word "friendly" if there was no con-
669 troversy or difficulty between you and your mother?

A. Because when there is no difficulty then it is friendly.

Q. And by means of an attorney was the only way you could fix those things?

A. Yes, of course, through a lawyer, because—just think—between my mother and myself we couldn't do it.

Q. Do you remember what instructions you gave to lawyer Cuadra?

Counsel for defendants objects to the foregoing question on the ground of confidential relation between client and attorney or attorney and client; and advises the witness not to answer the question on the ground stated in the objection.

(Mr. HERNANDEZ:)

Q. Do you want to answer that question?

A. It is all the same to me.

Q. Well, if you want to answer the question, go ahead?

A. I follow the advice of my lawyer; if he objects to it then I do as my lawyer tells me to do.

Q. Then you refuse to answer the question?

A. No; I do what my lawyer advises me to do.

Q. Your lawyer advises you not to answer the question. What do you do?

A. Then if he advises me I believe he advises me correctly.

Q. Then, you do not want to answer the question, on the advice of your lawyer?

A. No. It would be the same to me to answer or not to answer, as I would answer the truth, but as my lawyer advised me not to answer I will not answer.

Q. Well, either one of the two: You refuse to answer upon the advice of your lawyer, or let us have the answer?
670 A. Then, if my lawyer does not want me to answer I will not answer.

Q. Do you remember having employed Cuadra to represent you in certain dominion title proceedings?

A. I don't understand what you tell me.

Q. Have you ever heard about dominion title proceedings?

A. No.

Q. Have you ever heard of dominion title proceedings being instituted in your name for the properties which were left by your father—expediente de dominio?

A. I don't understand that word.

Q. Do you know of your own knowledge if you ever gave instructions to Cuadra to institute an expediente of dominion?

A. But it is that word "expediente of dominion" that I cannot understand; explain it to me.

Q. They have never explained to you that word before?

A. No, they don't explain to me; lawyers don't explain word for

word what they say. Does that mean to possess that which is your own?

Q. Did you ever employ Cuadra to institute proceedings in the District Court of Humacao for the purpose of inscribing the properties which were left by your father?

A. The only thing was after the contract of transaction was made, we went to the Notary, Aldrey, to register the property in order to give to each of us their own share.

Q. That is the time that you said that you went to the notary's office to sign a certain notarial deed?

A. Yes.

671 Q. That is the only time that you went to the notary's office?

A. The only time. Afterwards I went there again but it was not for that purpose; it was for one hundred acres——

Q. But you have never heard or had explained to you certain proceedings of expediente de dominio which were instituted in the District Court of Humacao in your name?

A. The only thing that was explained to me was about a contract of transaction which, if it had been signed before the notary afterwards, the property would have been divided and each one of us would have done with our shares whatever we wanted to do.

Q. Who advised you to sign that document?

A. No one.

Q. Who was your attorney at that time?

A. Lawyer Cuadra.

Q. With whom did you discuss the terms of that document?

A. I didn't discuss it with anybody, I had a conference with my husband.

Q. With respect to what?

A. Well, as regards that I could have my share and that my husband could work in my property and that which might go to other persons should have gone to us.

Q. Did Cuadra advise you to sign it?

A. No, he did not; it was voluntary that I signed it.

Q. Who presented it to you for your signature?

A. Well, Mr. Landron and Mr. Cuadra.

Q. Who drew it up?

A. I don't know in whose handwriting it is.

Q. Was it written in your house?

A. No.

672 Q. At what time was it presented to you?

A. During the daytime.

Q. At what hour?

A. I cannot remember the hour.

Q. Was it in the morning or the afternoon?

A. No. It was the afternoon; it was not in the morning; it was already late.

Q. Are you sure it was not at night?

A. It was just at dusk; it was neither night nor day.

Q. And when Cuadra presented the document to you what did he tell you?

A. He asked me to read it and see if I was in conformity with the basis asked for by my mother, and I read it and found it in conformity and I signed it.

Q. Where did he get the data from with which to draw that document?

A. You know that lawyers don't need to be given data in order to make contracts; of course my mother would have explained to him the terms more or less in which she wanted the contract drawn.

Q. And did you read it carefully?

A. Yes, it was read to me first and then afterwards I read it myself.

Q. Who was it that read it to you?

A. Manolo Argueso.

Q. Did he explain to you its contents?

A. As it was written he read it to me, and I, of course, hearing it read, had to understand it.

Q. Didn't he make further explanation of its terms and
673 effects?

A. As he continued reading I was understanding what he was reading, and then afterwards I read it myself.

Q. After you signed that document who else signed it?

A. I know that I signed it and that there were present there Cuadra, Landron, Almiroty, Argueso and my husband; but I don't remember whether the others signed or not.

Q. Do you know if Lopez Landron signed there in your presence?

A. That I do not remember.

Q. Do you know if Cuadra signed in your presence?

A. I do not remember that either.

Q. Do you know if Doña Manuela signed in your presence?

A. After they left my house then they said they were going over to Maria's.

Q. Do you know or do you remember if Doña Manuela signed in your presence?

A. No, she did not sign in my presence.

Q. You are sure that she did not sign in your presence?

A. No, in my presence she did not sign.

Q. Are you sure that Almiroty did not sign in your presence?

A. That I do not remember.

Q. So you don't remember whether the other parties and witness signed in your house, in your presence, or not. The only thing you remember is your having signed the contract?

A. Yes, I remember I signed it, but as to the other things I don't remember.

Q. Where did you sign that—in the parlor?

A. In the parlor of my house.

674 Q. Were they sitting around there?

A. No; they were sitting in the rocking-chairs and I sat down at the table.

Q. And you stayed there in the parlor until they got up and left?

A. No; after I signed then I sat in another chair.

Q. But in the parlor in their presence?

A. Yes, sir.

Q. And you stayed there until they left and bid you "goodbye?"
A. Yes, sir.
Q. And you cannot remember whether they all signed in your presence or not?
A. No, I don't remember.
Q. You have a failing memory?
A. As happens with every person in the world some things are remembered and some are not.
Q. Do you know what you were getting by that contract?
A. Yes.
Q. What was it?
A. My capital.
Q. Do you know in what it consisted?
A. One of the properties of the inheritance of my father.
Q. Do you know what part was that?
A. The names of those estates are so many that I cannot say what they are either.
Q. Can't you remember a single one of those properties that you were getting by that contract?
A. One was "Mulas."
675 Q. How much were you going to get?
A. One-half.
Q. Now let us have another? What other property.
A. Braziles.
Q. How much did you get of that?
A. Now the amount you had better ask my husband; afterwards I didn't mix myself in it at all.
Q. Don't you know if you got one-half of it or one-fourth, or what?
A. Half of that property was given to me and the other half, according to the contract, belonged to my sister.
Q. You mean to say that you got half of the "Braziles"?
A. Yes.
Q. Do you remember another property?
A. Another property is in the possession of these gentlemen (referring to Mr. Fuertes who was present).
Q. What was the name of that?
A. This gentleman here (referring to Mr. Fuertes) can give you the name of it.
Mr. FUERTES: "Culo Prieto."
Q. Did you know how much you were going to get of that property?
A. Of course; one-half also.
Q. Do you remember another?
A. No, I don't remember the names of the others.
Q. Did you get any personal property such as cattle, jewels or furniture?
A. No, nothing.
Q. Did you get what was coming to you from the properties of your deceased brother José Rios y Gutman.

676 A. No, because as the capital was divided into three parts two parts could not belong to me.

Q. Did you know at that time that those properties that were inherited by your mother from your deceased brother José Rios y Gutman belonged entirely to you and your sister?

A. That I do not know.

Q. Did your lawyer ever explain to you what rights you had to the properties inherited by your mother from your deceased brother?

Counsel for defendants advises the witness not to answer the foregoing question for the same reason heretofore stated, that of confidential relation between attorney and client.

Q. Do you want to answer the question?

A. No, if the lawyer objects I do not.

Q. Did you at the time of signing that contract know what rights you had to those properties which were inherited by your mother from your deceased brother?

A. I do not understand what you mean to say.

Q. Did you know at the time of signing that contract, or was it explained to you by your lawyer or by your husband, whether those properties that were inherited by your mother from your deceased brother belonged to you entirely, or one-third, or one-fourth?

A. No, nothing belonged to me; except of the three parts
677 of the capital I was entitled to one.

Q. That is not responsive to my question. (Question repeated to the witness.)

A. From the moment of the signing of that contract dividing the capital into three parts the name of my brother was not mentioned at all.

Q. Do you know to-day that by law all the properties inherited by your mother from your deceased brother belong to you and your sister entirely?

A. No. Some lawyers said that that property left by my brother belonged to my mother, that is was coming to us after the death of my mother, and some other lawyers held differently.

Q. What lawyers advised you that it did not belong to you and your sister?

A. No lawyer advised me as to that, but at one time I heard my mother had had a consultation with Lawyer Canalejas and some lawyers told her that the property belonged to her and some other lawyers told her it belonged to us.

Q. Do you think at the time of signing that document, or have you been made to understand, that your mother was entitled by law to one-third of all the inheritance of your father?

A. That she was entitled to the usufruct, and that also she had brought in capital when she married and that she was entitled to the profits.

678 Q. Did you know that by signing that document you were giving up rights and properties vested in you by law, and were going to get less than you would get under the law?

A. Yes, by dividing the capital into three parts nothing would

have belonged to me from my brother if it was the case that some of it was to correspond to him.

Q. Then you knew that you were giving up your rights to the properties of your brother?

A. I knew it and I didn't know it, because, as I say, some said that the property belonged to my mother and some other people say that it belonged to us.

Q. What was your own conviction?

Q. If you hear one lawyer telling one thing and you hear another lawyer tell a different thing, then you don't know where you are at.

Q. What made you give up the rights that you had to the properties of your deceased brother by signing that document?

A. Because, I understand, as she was my mother I was always too pleased with the contract that I made.

Q. So the only purpose of your giving up those rights was to please your mother?

A. Yes; because I believe it should have been so.

Q. Did she ask you to do it?

A. No.

Q. Did she ask you to please her?

A. No, neither.

Q. You testified in your direct examination that you were very pleased with the services rendered to you by your lawyer, Cuadra?

A. Yes, sir.

679 Q. In connection with what case were those services rendered?

A. In the case that himself and Lawyer Landrón wanted to make an agreement so as to fix everything friendly, and not to find ourselves in the position that we now find ourselves.

Q. Were those the only services that he had rendered you?

A. Services? Well, those.

Q. Outside of the services rendered by Cuadra to you in connection with the signing of that private document and the testamentary proceedings, do you know of any other service rendered by him to you in connection with any other proceeding?

A. Services—professional services.

Q. But connected only with the testamentary proceedings and the signing of the private agreement? Those are the only two cases, are they not?

A. He comes acting in my defense ever since I spoke to him about it. Even now he comes.

Q. Is he your attorney to-day?

A. Yes.

Q. Do you remember having purchased a property from Palmer on November 21st, 1902?

A. Yes.

Q. Who conducted the negotiations with Palmer for the purpose of that purchase?

A. My husband.

Q. Did you have anything to do with the purchase of that property?

A. To take the money from my wardrobe.

Q. Outside of taking the money from your wardrobe what
680 else did you have to do with the purchase of the property?

A. To go afterwards to the house of the notary to sign the deed.

Q. Those are the only two things you had to do in connection with the purchase of this property?

A. That was the only thing, and then afterwards to keep the document in my wardrobe.

Q. Who told you that that property was going to be sold to you?

A. I told "Palco" (my husband) to see if he could get that property for me.

Q. Then you requested your husband to purchase this property?

A. Yes, I wanted to have 100 acres in Naguabo.

Q. Did you know that this was one of the properties composing the inheritance of your father?

A. Yes, and that that property had belonged to my mother and that she had sold the same to Palmer.

Q. What special motive did you have in purchasing this particular piece of property?

A. I had a will to buy it—a fancy for it.

Q. Why? Was it very good?

A. Because I wanted to have them there.

Q. Did you consider it a very good property?

A. That I fancied it, that I wanted to have it.

Q. Did your husband inform you of the conditions of the sale?

A. What? Of the 100 acres?

Q. Yes.

A. That Palmer was selling them, that we gave our money
681 and it became ours.

Q. How much did *hou* offer for the property at first?

A. That, I don't know how much he would have offered for it (meaning her husband); he was the one that understood about the sale.

Q. Who were present in the notary's office when you signed that deed?

A. Juan Rochi and a certain Porrata.

Q. Was Palmer there?

A. I don't remember whether Palmer was there.

Q. Are you sure that he was not there?

A. No, I am not sure; I don't remember.

Q. You can tell us whether Cuadra was there?

A. Yes.

Q. Who took the money?

A. When?

Q. When it was paid to Palmer?

A. I don't know because I was in Humacao and this took place in San Juan.

Q. Where was the money paid?

A. In San Juan.

Q. How did you deliver that money to your husband?
A. By giving it to him in his hands in a roll of bills.
Q. Was it all in bills?
A. Yes; I had other kinds, but you know it is easier to keep money in bills.
Q. Didn't you deliver to him any gold?
A. No.
Q. Or silver?
A. No.

682 Q. Do you know what denomination those bills were?
A. They were of different denominations.
Q. Do you remember some of them.
A. There were 20's, 50's, 5's, 40's, 1's.
Q. Who is in possession of this property to-day?
A. My husband and myself. It is leased to Don Gustavo Preston.
Q. How much are you getting for it per year?
A. Sixty dollars.
Q. Per month?
A. Per month.
Q. For how many years?
A. My husband can answer that question because he was the one to make the lease.
Q. Do not attend to your own properties, do you?
A. The natural thing is that my husband should attend to them.
Q. You depend upon him for whatever is connected with the properties?
A. Yes, sir; he has got my power to represent me.
Q. You never interfere in the management and taking care of your interests. He does all that?
A. Yes, sir.

683 Redirect examination by Mr. ANTONSANTI:

Q. Will you explain to me what you mean in the starting of your cross-examination by the animosities or complaints which you had against your sister María?
A. That she was always against my mother.
Q. Now, you also stated that María had sued you. What did she sue you for?
A. When?
Q. That is what I want to know: After all this signing of the contract you said that María had sued you?
A. Yes, sir.
Q. Why did she sue you?
A. She wanted me to do like she did. She wanted to cancel the contract of transaction that had been made between us, at least that is what I think she wanted.
Q. Do you know whether María ever sued you claiming the one-half of her interest in the different properties which were adjudicated in common to you and to her by that contract?
A. I don't believe she had to sue me for that.

Q. You also testified a little while ago that Don Faustino Fuertes had one of those properties: Now in what capacity has he
684 that property?

A. He has got them under lease.

Q. You also stated something about "gananciales" which should have gone to your mother during her administration of that estate: Now do you know whether the amount due your mother on account of "gananciales" was greater or less than the inheritance left by your brother José Rios y Gutman?

A. I never made an account of it; I never added it up.

Recross examination by Mr. HERNANDEZ:

Q. When you said just awhile ago that Doña María was always against your mother, you mean to say that she was always making claims against your mother for her share of the inheritance, don't you?

A. They were in continuous litigation, and in addition to that personal unpleasantness.

Q. Litigation referring to the inheritance of Don José María Rios, wasn't it?

A. I don't know why they were in litigation?

Q. Was she claiming all the time her interest in the inheritance against her mother?

A. I don't know what they were litigating about.

Q. By reason of all this litigation, of all these suits which
685 you said have been instituted by Doña María against you, today you and she are enemies? Are you not?

A. No; because she offended my mother; if she had offended me it would not be so.

Q. Then you are enemies because she was always making claims against your mother?

A. We are not enemies; I am not an enemy of anybody; only that we are not friends.

Q. You never *to* speak to her and you never visit each other?

A. No.

Witness excused.

686 HUMACAO, PORTO RICO, *July* 10, 1905.

EMILIO FAURA witness called on behalf of defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. Give your full name?

A. Emilio Faurio y Rios.

Q. Where do you live?

A. In Humacao.

Q. How long have you lived here?

A. Some fourteen years.

Q. Do you know the complainant María Rios de Rubio?

A. I do.

Q. Do you know the property called "Los Braziles" or "Maizales?"
A. Yes, I do know that finca.
Q. And the larger finca known as "San José de las Mulas?"
A. I also know that?
Q. Are you at present in possession of either of those estates, or of a part of either one of those estates?
A. At present only of a part of "Los Braziles."
Q. Have you formerly been in possession of any part of "Las Mulas?"
A. Yes, sir.
Q. In what capacity were you, or are you, in possession of
687 any part of these estates that you refer to?
A. As a lessee.
Q. From whom did you lease them?
A. From Mrs. María Rios, widow of Rubio.
Q. And for what term of years have you rented that part?
A. I made a contract for a year and afterwards it was continued without a contract.
688 Q. Have you recently acted in any representative capacity in the valuation and division of "Braziles" or "Las Mulas?"
A. Yes, sir, in this same year. Don Francisco Burzo spoke to me in behalf of Mrs. Maria.
Q. To do what?
A. In order that together with other gentlemen I should make an appraisement of those fincas and a division thereof.
Q. Between whom?
A. Between Mrs. Maria Rios and her sister Doña Petronila.
Q. What did you do in that representation—you and the other gentlemen chosen?
A. We called the surveyor who made a survey.
A. And a price was put to the different lots which make up the "Mulas" property; after this was done Mrs. Maria Rios was shown the appraisement and the division made, and in the presence of Mrs. Maria Rios, lots were cast for the two properties; one fell to Mrs. Maria and the other to the other sister Doña Petronila.
Q. Was anything further done as to the choice by lot?
A. Mrs. Maria Rios was satisfied with the portion that fell to her lot and we signed the minutes.
Q. Has any similar action been taken with regard to "Los Braziles?"
689 A. Yes, the same thing, also by means of casting lots.

Cross-examination by Mr. HERNANDEZ:

Q. How many acres does the "Mulas" contain?
A. I don't remember the number of acres, but I think it is over one thousand acres.
Q. More or less, do you think it would reach thirteen hundred acres?
A. No. I think there is over one thousand.
Q. Well, what was the result of your examination for that appraisement? How many acres did it appear to have?

A. Questions of figures I cannot remember because we had the plan or map before us.

Q. I do not ask you to give me the exact figure; what I want is to arrive more or less at the number of acres, whether it is thirteen hundred or twelve hundred, a difference of fifty acres more or less would not make any difference.

A. What I remember now are the names of the enclosures; I think there are six.

Q. Then in accordance with your examination it appeared to have about twelve hundred acres, didn't it?

A. Yes.

Q. Was the property "Braziles" included within the plantation "Mulas" or was it a separate parcel?

A. It was separate from it.

Q. How many acres do they contain?

A. "Los Braziles?"

Q. Yes.

A. "Braziles" must have something like one hundred and
690 seventy acres more or less.

Q. So altogether it was about thirteen hundred and seventy acres more or less?

A. Yes. I cannot recollect accurately.

Q. Those were the only two properties you were called to assess were they not?

A. Yes, the "Braziles" and "Las Mulas."

Q. And did you make the appraisement?

A. With other gentlemen; not myself alone.

Q. You and who else?

A. Francisco Burzo and Mr. Julio Guzman.

Q. Who else?

A. And the man in charge of "Las Mulas," Mr. Perfecto Rodriguez.

Q. Was there anybody else?

A. I don't remember; there were others, but I don't know in what capacity they were there.

Q. Who appointed you to make that appraisement?

A. Mr. Francisco Burzo approached me to speak to me in behalf of Mrs. Maria.

Q. Doña Maria didn't speak to you directly, did she?

A. No, sir.

Q. And who were appointed by the other side?

A. On the other side,—it might have been Mr. Julio Guzman, I don't know whether it was him or not.

Mr. PETTINGILL: I will show him this copy to refresh his recollection.

(Mr. HERNANDEZ:)

Q. I show you this paper to refresh your recollection (handing document to witness). Please read it and let us know whose
691 signatures appear upon that document?

A. Now are you able to state who signed that paper?

A. Yes, sir, the same parties who are named here; I witnessed these signatures affixed to this instrument.

Q. Who are they?

A. Perfecto Rodriguez, who was present.

Q. Who else?

A. Francisco Burzó Cabrera.

Q. Go ahead.

A. Mr. Julio Guzman and Mr. Antonio Noya.

Q. Which one of these gentlemen acted on behalf of Doña Maria?

A. In the name of Mrs. Maria was Perfecto Rodriguez, myself and Mr. Francisco Burzó.

Q. And the other gentlemen, on whose behalf did they act?

A. In the name of Doña Petronila Patricia.

Q. Was Paco Noya, the husband of Doña Petronila, present?

A. Yes, he was.

Q. Was Doña Petronila present?

A. She was not.

Q. And Paco Noya gave his consent and approved that appraisement, did he not?

692 A. I think he gave it.

Q. Now did you make a conscientious assessment of that estate?

A. Yes, sir, according to my knowledge, and understanding I made that appraisement.

Q. And all the parties appointed as appraisers agreed upon the final valuation made?

A. Yes, sir, they did.

Q. Now let us know what were the figures reached by you all upon the valuation of that estate?

A. The two lots were made of something over fourteen thousand dollars each, there remaining a very small difference.

Q. Please look at that document (being the same document heretofore handed to witness) and refresh your memory and give us the exact figures of the total valuation of the "San José de las Mulas" and the "Braziles?"

A. Of the same amount that appears here and the same lots such as they appear here.

Q. Read them in order that you may explain them—the total, nothing more; give us the total of each lot?

A. I think there is fourteen thousand two hundred and eighty eight dollars and eighty-two cents ($14,288.82).

Q. That is, one lot?

A. That is one; and the other is fourteen thousand two hundred and forty-four dollars and fourteen cents ($14,244.14).

693 Q. Any other lot?

A. There are no more lots; there is a little difference here on account of the smoke-stack which was to be divided up afterwards; no value was put to that chimney.

Q. How much was that?

A. On account of the blurred condition of the paper I cannot tell exactly what it says, there is some difference which one side was to turn over to the other.

Q. How much, one or two pesos?

A. No, more; it appears here as being twenty-two dollars and thirty-six cents ($22.36).

Q. Now you have given us the valuation of the two lots and the difference, now gives us the total?

A. It is twenty-eight thousand five hundred and fifty-five dollars and thirty-two cents ($28,555.32).

Q. So that the just and true value of the plantation "Las Mulas" and "Braziles" to-day is twenty-eight thousand five hundred and fifty-five dollars and thirty-two cents ($28,555.32)?

A. "San José de las Mulas." I do not think los "Braziles" are included here; the "Braziles" was not included; "Braziles" had already been divided.

Q. Then the true value of the plantation "San José de las Mulas" to-day is twenty-eight thousand five hundred and fifty-five dollars and thirty-two cents ($28,555.32)?

694 A. Yes, sir.

Q. And that is the true value?

A. Yes. That is to say, when the division was made.

Q. When was that?

A. I think it is some two or three months ago.

Q. Two or three months ago?

A. At least three months ago.

Q. And what was the true value of the "Braziles" at the time you made the appraisement two or three months ago?

A. The value that we put to it?—I don't remember the value that we put to it; the real value I cannot remember because there are so many properties.

Q. Well, more or less—a difference of a few hundred dollars will not make any difference?

A. There was an auction held sometime afterwards and the "Braziles" was appraised at from twenty-five to thirty dollars per acre, more or less.

Q. That was the true and just value of "Braziles" per acre at that time, twenty-five or thirty dollars per acre?

A. I do not believe that a price was put per acre for "Los Braziles" but that a value was put to the whole, and then the value per acre was estimated, and the division was unequal because one part of the property was more hilly than the other.

Q. What was the value of the whole, then?

695 A. The appraiser appearing there on the premises says there are so many acres in one lot and so many in the other; he divided the property into two halves and afterwards in casting the lots which took place in the house of Maria Rios one of the lots was assigned to Mrs. Maria and the other to the other sister.

Redirect examination by Mr. PETTINGILL:

Q. Do you know whether "Las Mulas" and "Braziles" are the only tracts of land owned in common by Doña Maria and Doña Petronila?

A. I understand that they are also owners of another property.

Q. Do you know approximately the total area of land, before this division, that they were owners of?
A. No, I don't remember.
Q. Do you know the property called "Culo Prieto?"
A. I know it by name, nothing more.
Q. Do you know more or less how many acres it has.
A. No, sir.

Witness excused.

696 HILARIO MAESO, witness called on behalf of defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your name?
A. Hilario Maeso.
Q. Where do you live?
A. In Naguabo.
Q. How long have you lived there?
A. Eleven years.
Q. What is your occupation?
A. Manager of the plantation "Quebrada Palmas."
Q. What kind of a finca is that?
A. It is part cattle and part a sugar cane plantation; at present very little cane is cultivated.
Q. Of what size is that finca?
A. One thousand and ten acres (1010).
Q. How long have you been administrator of that finca or plantation?
A. Eleven years; the time that I have resided in Naguabo.
Q. Are you acquainted with the tract of land called "Cercado de Ramirez"?
A. Yes.
Q. How long have you known that tract of land?
A. At least eight or nine years.
Q. How far is "Quebrada Palmas" from the "Cercado Ramirez?"
A. Between three and one-half and four kilometres.
Q. Have you during those eight or nine years known the value of lands in the vicinity of "Cercado de Ramirez" and your
697 own estate?
A. Yes.
Q. In your judgment what, in the year 1901, was the value of the "Cercado Ramirez?"
A. At that time it could not be worth more than forty dollars per acre.
Q. For what purpose was it used at that time?
A. Cattle, exclusively.
Q. Since you have known it and up to 1901 was it ever used for anything else?
A. No, sir.
Q. What is it used for now?
A. Same thing.

Q. Do you know other properties in that vicinity called "Cercado Torres," "Cercado Maldonado," "Islote Quiñones," "Islote Rivalta," "Los Puentes" and "Madam Duran?"

A. Of those named I know "Madam Duran," "Islote Quiñones," "Islote Rivalta"; also "Torres," I don't know where it is situated, but I suppose it is near the Rio Blanco.

Q. These properties that you do know, how do they compare in quality and value with the "Cercado Ramires?"

A. There is very little difference between them with very
698 few exceptions.

Q. They are valued practically the same?

A. The same.

Q. Is there any part of the "Cercado Ramirez" which to-day is used for other purposes than pasture?

A. All of it is devoted to pasture except some twenty or twenty-two acres which are planted in cane.

Q. What part of the "Cercado Ramirez" is of a quality which can be dedicated to cane?

A. Of lands which may be devoted to cane there may be something like one hundred and fifty acres.

Q. And for what reason cannot the remainder of it be devoted to cane?

A. The reason is very simple, on account of the floods of the river, which, owing to the impetuosity of the water cane cannot be planted.

Q. The impetuosity of the water and the flood?

A. When it is in flood, because it washes the cane.

Q. Is the whole surface of the "Cercado Ramirez"—the whole number of acres, of the same quality of land?

A. No, sir.

Q. Explain the difference?

A. The difference is this: That a portion of it adjoining or close to the river is composed of a sandy soil or loam washed there by the river; the difference I find between the balance of the land and that adjoining the river is that the latter is made up of sand
699 altogether, which, although at present on account of having grass planted on it is firm and compact, in case that the land is moved for the purpose of planting cane it will be very easily washed by the river in case of flood; in that same section of the property already described there are some two or three acres, more or less, covered by the water resulting from the floods of the river; there are several places on that same section of the land already referred to where there are large pools or ponds of water made by the river when it is flooded, all of which make a total of some two or three acres more or less which cannot be used for anything.

Q. How near to the sea is the "Cercado Ramirez?"

A. The property bounds with the mouth of the river and from the ditch or "caño" to the Playa cannot be more than ten to fourteen acres.

Q. Then has any part of this "Cercado Ramirez" portions of what they call "poyal" or "mangle?"

A. Yes.

Q. Do you know approximately how many acres are included in that swamp?

A. I could not tell you exactly the number of acres that are in it, I know there are some under water.

Q. Is that good for anything?

A. For the present for nothing, only when the water permits getting some wood out of it; that is only when the weather permits it.

Cross-examination by Mr. HERNANDEZ:

Q. Mr. Maeso, you have testified that you are the manager
700 of the "Quebrada Palmas" plantation. How long have you been its manager?

A. Eleven years.

Q. Who appointed you administrator of the property?

A. The owner of the property.

Q. Who is the owner of the property?

A. Mr. Mateo Luchetti who lives in Santurce.

Q. Is that the only property of which you are the manager?

A. Yes, sir, the only one of which I am the manager.

Q. Do you administer any other property besides that?

A. I have another property abutting with this which I have leased.

Q. What is the name of that property?

A. "Esperanza," belonging to the "Noble" estate.

Q. From whom did you lease it?

A. From the heirs.

Q. Is Mr. James Noble one of the heirs?

A. He is one of the heirs and at the same time one of the lessees, because we are together; the lease has been obtained from the heirs or succession.

Q. Besides you and Mr. Noble who else is also in combination with you in the plantation "Esperanza?"

A. You mean to say for the administration of it or for the lease of it?

Q. For the lease of it?

A. The lease is held by Mr. Noble, Mr. Fuertes, Jr., and myself.

Q. Is that Mr. Fuertes the son of Mr. Faustino Fuertes, who is one of the defendants in this case?

701 A. Yes.

Q. Are the profits of that plantation divided among all, that is Mr. Noble, Mr. Fuertes, Jr., and yourself?

A. Yes.

Q. For how long is that lease?

A. For two years, which expire on the last day of August.

Q. Of this year?

A. Yes; the contract is about to expire.

Q. And an extension is going to be made?

A. We do not know yet. We have been warned that the contract or lease expires on the thirtieth of August, and we do not know at present whether or not we are going to continue or give it up.

Q. To what business is the plantation "Esperanza" dedicated?
A. To cattle.
Q. You have business relations with Mr. Fuertes' father?
A. None whatever.
Q. Don't you sell cattle to Messrs. Garzot & Fuertes?
A. Yes. I didn't understand at first the question. But if by "business relations" you mean if we had any business together, yes, sir, we did.
Q. Are you in current account with him?
702 A. No, sir.
Q. Do you owe them any sums of money?
A. No, sir.
Q. Do they owe you any sums of money?
A. The transactions between us are the sale of cattle and are usually made for cash.
Q. When did you lease the plantation "Esperanza?"
A. Two years ago; two years, because that is the length of the contract which we have.
Q. Prior to that time where were you working?
A. As manager of the "Quebrada Palmas" plantation.
Q. And besides working on the "Quebrada" plantation did you attend to any other business?
A. Before the lease of "Esperanza" I also had the "Esperanza" as manager thereof.
Q. Who appointed you manager of the plantation of "Esperanza?"
A. The heirs.
Q. Of the Succession Noble?
A. Yes, sir. No, I was not appointed manager by the heirs of the Succession Noble because Mr. Jaime Noble had the lease and he was the party who appointed me, and Mr. Noble had the plantation devoted at that time to the cultivation of cane.
Q. In that property that you have leased or of which you are manager don't you keep cattle of Messrs. Garzot & Fuertes?
A. No, sir. Let me explain that I am the administrator or manager of the plantation "Esperanza;" I am manager simply of the hacienda "Quebrada Palmas."
703 Q. Then let me put you the question so that you will understand it: Do you keep at present, or have you kept, in the plantation "Esperanza" cattle belonging to Messrs. Garzot & Fuertes for the purpose of fattening and dividing up the profits with them?
A. No, sir.
Q. And have you kept cattle in the plantation "Quebrada Palmas" for the same purpose?
A. Cattle of Messrs. Garzot & Fuertes?
Q. Yes.
A. No, sir.
Q. Has Mr. Fuertes, the defendant in this case, invested money in the plantation "Esperanza" or in the plantation "Quebrada Palmas" for the purpose of raising cattle?
A. No, sir.

Q. Mr. Maeso, are you in the habit, or is it your business, to assess properties?

A. I have neither the habit nor is that my occupation, but in case of necessity I can do it.

Q. Have you ever assessed any property?

A. No, sir; simply the "Quebrada Palmas" preparatory to the statements to be made to the Treasury Department for the purposes of taxation.

Q. Mr. Maeso, do you pretend to give this court to understand that you are an expert assessor of property?

A. Yes, sir, I am able to appraise—put a value to it, if I am appointed to do so, even though I have only assessed the plantation already referred to for the purposes of taxation.

Q. Have you ever been called by Garzot & Fuertes to assess the "Cercado Ramirez?"

704 A. No, sir.

Q. Have you ever made it the purpose of a visit the examination of that property for the purpose of assessing it?

A. No, sir. I have visited it several times in order to see the cattle there that I have sold there on several occasions and on other occasions for the purpose of looking at the cattle.

Q. Have you ever stopped to examine the quality of that land there?

A. I can answer yes, but I have done it without any fixed purpose.

Q. Explain to us how did you examine the land? That is to say, what kind of an examination was it? Was it an analytical examination?

A. No, sir; I being a plain man I simply made a passing examination or ordinary examination of the land on my own account for my own benefit, since I did not have to report the result thereof to anybody.

Q. Then your opinion that that land is worth, or was worth, in 1901, forty dollars per acre is based upon the examinations made by you upon passing over that property or upon going there to look at the cattle, is it not?

A. That comparison has nothing to do with the examination that I made of the finca, since I do not remember the time I made that appraisement; I cannot state that the appraisement made at the time was in accordance with the particulars set forth in your question, the matter being that the figure or value put to it was provincial currency.

Q. In provincial currency?

A. Yes, sir.

705 Q. Mr. Maeso, you are an intelligent witness and you understand perfectly well the question which I put to you, and I request you again to answer that question, yes or no, categorically, and after that you may make any explanation you desire?

Q. (Repeated.) "Then, your opinion that that land is worth, or was worth, in 1901, forty dollars per acre is based upon the ex-

aminations made by you upon passing over that property or upon going there to look at the cattle, is it not?"

A. In the shape that the question is put to me I cannot say "yes" or "no," because I have to explain. I can say that at that time in 1901 the property was worth forty dollars per acre, but as to bringing it home to the date or time that you refer to I cannot say because I don't remember the time I made that examination that you referred to. I have been several times on that plantation but I cannot remember the dates.

Q. I request you not to evade my question. I am not asking you when you made the examination of the property. I am not putting to you any comparison. I am only asking you whether the opinion that you have stated here that that property was worth in 1901 forty dollars per acre is based upon the examination that you made in passing over that property and going over there to look at cattle. That is my question.

A. No, sir.

Q. Upon what, then, did you base your opinion?

A. I base that opinion, at that time, in 1901, that the property was worth the amount referred to, first, that the cattle at that time had a very low price; cattle transactions and operations were
706 difficult, and as there was nothing else around the neighborhood to which those lands could be devoted at that time the price was governed more or less by the purpose or use to which the property may be put at the time, and as the property could not be put to any other use there was no justification in giving any other value than that to the land.

Q. When you passed over that property in 1901 it was already in possession of Garzot & Fuertes?

A. No, sir.

Q. Who was in possession of it?

A. In possession of it was as lessees Garzot & Fuertes, but not as owners of the property; in other words, Garzot & Fuertes had possession of it as lessees at that time but not as owners.

Q. Do you know how much they were paying for it?

A. I cannot answer that question; I never felt curious enough to ask.

Q. When was the last time that you have been upon that property?

A. Some two or three months ago, more or less.

Q. Did you go over it carefully?

A. I just simply went there to take some cattle that I sold to Garzot & Fuertes.

Q. You have testified that only one hundred and fifty acres of that property could be devoted to cane. What would you say
707 if I told you that Mr. Fuertes has testified that two hundred acres of it can be dedicated to the planting of cane?

A. I have said one hundred and fifty acres more or less. My testimony is that it was one hundred and fifty acres more or less. You cannot get an exact figure as to the number of acres of land by simply glancing over it.

Q. Then you cannot say positively that only one hundred and fifty acres of it can be dedicated to cane. It might be two hundred acres?

A. Well, sir, the figures given by me is what we call a "prudent calculation." In order to be able to give you an accurate figure as to the exact number of acres it would be necessary to take a surveyor there to survey the property.

Q. Then your calculation is more or less a guess-work?

A. As to the number of acres my figures are guess-work, but as to the price put—as to the price at the time being so much, that is a concrete valuation.

Q. You have testified also that there were about twenty acres that are sandy and improper for the cultivation of cane. Is that the bank of the river?

No answer by witness.

Q. How many acres did you testify were sandy and improper for the cultivation of cane?

A. I have not given you or testified as to the number of acres, but that land to which you refer is along side of the river and I guess that there are quite a good number of acres of that class of land;
there are also other sections of the land which are not sandy
708 but which are swampy and also unfit for cultivation; there
are also some pools or ponds in there to which I have referred already and which cannot be devoted to that purpose either, and also some woodland.

Q. But you don't know the number of acres of that kind of land?

A. No, sir.

Q. Is it not a fact that cane land has a very good price to-day in Porto Rico?

A. It depends upon the section of the country where they are situated.

Q. In the district of Naguabo?

A. Owing to the prospects of the establishment of a sugar central in the lands known as "Pasto Viejo" and the establishment of another central by the San Cristobal Sugar Company lands proper for the cultivation of cane have acquired an increased valuation at present; those lands referred to, owing to the prospects of the establishment of those centrals have increased in valuation, but in the event of the establishment of those centrals falling through the value of those lands will perhaps fall under their primitive assessed valuation.

709 A. Unless it was as a lot for building purposes I do not think that that price would be paid for an acre in that neighborhood, however good the lands might be; it might have been done for one acre only.

Q. What, then, do you think would be the value of cane land in that vicinity at present—land proper for the cultivation of cane in the vicinity of "Cercado Ramirez," if sold to-day?

A. If those centrals in prospect of construction are erected they might be worth sixty-five to seventy dollars per acre.

Q. What would you say then if I told you that Mr. Fuertes has testified that the lands of the "Cercado Ramirez" are worth to-day from eighty to ninety dollars per acre?

A. I don't know what I would say, because I don't know in what condition Mr. Fuertes was when he said that, because my opinion is that it is not worth that. He may have said that—I don't deny it.

Q. Do you think you know that land better than he does?

A. I wouldn't go as far as saying that I know better than he the valuation of land, but according to the practice or experience I have had I think I can tell as well as he can.

Q. Who requested you to come here to testify?

A. Mr. Fuertes—Garzot & Fuertes.

Q. Did he tell you what for?

A. He told me that it was to give testimony, but nothing else.

Q. Did they request you to testify as to the value of the "Cercado Ramirez?"

A. No, sir.

710 Q. They didn't speak a word to you about it, did they?

A. They spoke to me and asked me to come here and testify; they said to me that I would be called upon to put a valuation to properties.

Q. Put a value upon what property?

A. Several properties.

Q. Didn't Mr. Fuertes mention to you the properties that he wanted you to testify about?

A. No, sir.

Q. You came in the same carriage with him this morning from Naguabo to Humacao, did you not?

A. Yes.

Q. And during the trip he has not spoken a word to you about what your testimony was going to be upon the value of the "Cercado Ramirez" or any other property? Is that true?

A. No, sir.

Q. He has never discussed with you up to this very moment the value of the "Cercado Ramirez?"

A. No, sir.

Redirect examination.

Q. In asking you the question about the value of the "Cercado Ramirez" I have made a mistake in the year. I should have asked you about 1902 instead of 1901. Is there any difference between the price of one year and the other?

A. No, no difference in the price.

Q. Did the conditions differ in any respect in 1902 from what they were about the year 1901 of which you testified?

A. There was very little difference in business.

711 Q. Or in other conditions in business in that vicinity?

A. What conditions?

Q. I mean as to the cultivation of sugar and the existence of centrals and things like that?

A. As to that there was nothing at all; there were no rumors to that effect at that time; the only rumors had at the time were concerning cattle.

Recross-examination:

Q. Who was in possession of the "Cercado Ramirez" in 1902?

A. I think that that question has already been put to me and I have stated that in possession of it as lessees were Messrs. Garzot & Fuertes; I have always known them in possession of it in that capacity. Afterwards I learned that they had purchased that property.

Q. Did you also in 1902 make an examination of that property?—of the "Cercado Ramirez"?

WITNESS: I have said already that I made an examination of the finca but I do not know whether it was before or after the sale.

Q. Or when there was another kind of coin here?

712 A. I don't remember whether it was at that time or not.

Q. You do not remember whether it was in 1899, 1900, 1901, 1902 or 1903?

A. No, sir, I could not tell you because I have been in the property several times, and I can tell for what purpose I have been there if you want me to.

Q. If may have been before the Americans came to Porto Rico?

A. That I could not tell you because I don't remember the date, but I can tell you that I have been on the property both before and after the American invasion.

Q. But if you do not know in what year you made an examination of that property how do you pretend to give us the value for a certain year?

A. I will tell you; very simply: The heirs of Gonzalez and Hernandez were once at that property to look at it——

Q. In what year?

A. After the sale to Garzot & Fuertes. I have been diring that time——

Q. Go ahead.

A. And I accompanied that gentleman to go through the property; that is one of the times that I have been there.

Q. Do you remember whether that was in 1900, 1901, 1902 or 1903?

A. No, sir, that I cannot remember. I know it was after the sale to Garzot & Fuertes but I cannot state the date. I can tell you that the property had the same value at that time that it had in 1901 and 1902; it was not worth more because it was in the same condition.

Witness excused.

713 JESUS L. PEREYO witness called on behalf of defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your name?

A. Jesus L. Pereyó.

Q. Where do you live?
A. In Naguabo.
Q. How long have you lived there?
A. Twenty-five years and six months.
Q. What is your occupation?
A. Property owner.
Q. Have you properties in the jurisdiction of Naguabo?
A. In Naguabo; right in Naguabo.
Q. What kind of property?
A. At present, real estate; houses.
Q. Have you owned cattle or cane plantations at any time?
A. Yes.
Q. For how many years?
A. For twenty-one years I was the owner of a sugar cane plantation.
Q. Where?
A. In Naguabo.
Q. How large a plantation?
A. Six hundred and thirty acres.
Q. Do you know the property "Cercado Ramirez"?
A. Yes.
714 Q. How long have you known it?
A. That same number of years, over twenty-five years.
Q. Have you ever leased it or had any other business relation with it?
A. Yes, sir, I had at one time that finca leased.
Q. For how long?
A. A year, or something like that.
Q. For what business?
A. In partnership with Mr. Barriola. We were engaged in the cattle business.
Q. As a result of the conduct of your business have you been acquainted during the last five or ten years with the value of the different real estate in the district of Naguabo?
A. Yes.
Q. In your judgment, and from your knowledge of the quality of the land, what was the value of the "Cercado Ramirez" in 1902?
No answer by witness.
Q. What year was it that you had this "Cercado Ramirez" rented?
A. 1884 or 1885.
Q. Has the condition of it changed to any considerable extent since that time?
A. No.
715 Q. Now, in your judgment, and from your knowledge of the quality of the land, what was the value of the "Cercado Ramirez" in 1902?
A. At that time it was worth from forty to fifty dollars per acre.
Q. Who was in possesion of it at that time? Who was cultivating it?
A. I want to rectify. It was in 1884 that Mr. Bustelo had it, but in 1902 it was in possession of Messrs. Garzot & Fuertes.

Q. And what was it used for?
A. For cattle.
Q. During the time you have known it—you knew it previous to that time—was it ever used for anything except cattle?
A. No, sir.
Q. Do you know the extension of the number of acres in the "Cercado Ramirez"?
A. It is composed of about three hundred acres more or less.
Q. Is the land all of an equally good quality?
A. No.
Q. Explain what the difference is between the different properties?
A. There is a portion of it which is marshy.
Q. About how many acres?
A. From thirty to fifty acres.
Q. Then go on with the other property?
A. There is another portion of it where the dwelling house is situated and some cane planted, some forty of fifty acres of good land; there is another portion of it on the margin of the river 50
716 or 60 acres which are washed by the river, and the balance is a kind of land that I wouldn't call especially good but of a good quality.
Q. Then this fifty or sixty acres washed by the river, what are its characteristics?
A. Sandy.
Q. And as a result of this sand what is the value of the land as compared with the rest?
A. It is much less in value than the others.
Q. In your judgment how many acres of the whole tract are suitable for the planting of cane?
A. Something like 200 acres.
Q. Is the land of the "Cercado Ramirez" more or less valuable than in 1902?
A. To-day it is worth more.

Cross-examination by Mr. HERNANDEZ:

Q. Mr. Pereyó, you testified that you had the "Cercado Ramirez" in 1884 as a lessee. How long did you retain it as such?
A. Something like a year, more or less.
Q. From the year 1885, after the expiration of that lease, have you ever held those lands?
A. No, sir.
Q. Have you ever had anything to do with the "Cercado Ramirez" up to the present time?
A. Only at that time.
Q. So you only knew the condition, or you only knew the
717 condition of the "Cercado Ramirez" as it was in 1884?
A. Yes.
Q. And afterwards, after 1884 up to the present time you have never made an examination of those lands, have you?
A. I have been on the property many times—a thousand times.
Q. For what purpose?

A. For the purpose of purchasing cattle.
Q. But not for the purpose of examining the land?
A. No, sir.
Q. And not for the purpose of appraising the property?
A. No, sir; neither.
Q. Is it your business or your habit to appraise properties?
A. No, sir.
Q. From 1884 up to the present time have you owned land of your own?
A. Yes.
Q. Up to when?
A. Until 1903.
Q. What property did you own?
A. The plantation "Fé."
Q. Where is that plantation situated?
A. In Naguabo.
Q. Is it bounded by the "Cercado Ramirez?"
A. No, sir, but it is very near to it.
Q. Has it the same kind of land as the "Cercado Ramirez?"
A. I believe so. Part of them are and part of them are not.
Q. Do you think that they have the same value more or less?
A. I believe so; that is, the good part of the plantation.
718 Q. What did you do with that property in 1903?
A. I sold it.
Q. To whom did you sell it?
A. To Mr. Harold Marshall.
Q. For how much was it sold?
A. Thirty-five thousand dollars.
Q. Did you consider that a just value of the plantation at the time of the same?
A. No, sir.
Q. How much was that property of your own sold for per acre?
A. It could not be sold per acre, it was sold in bulk.
Q. How many acres did it contain?
A. Six hundred and twelve.
Q. How many of them are suitable for planting cane?
A. From four hundred to five hundred.
Q. Is it not a fact that you have instituted an action in the insular district courts to annul that sale because it was fraudulent by reason of the low price for which it was sold?
A. Yes.
Q. How much do you think would have been the just market price per acre of the good part of the land of the plantation "Fé"?
A. At the time of making the sale of the plantation "Fé"
719 the land under cane cultivation, the oxen, the machinery, buildings and the land have different values because they are of different qualities.
Q. What was the value per acre of the good quality of land?
A. At the time of the sale in 1903?
Q. Yes.
A. It could fluctuate between sixty and seventy dollars per acre.

Q. What was the value per acre of the next quality of land?

A. Thirty dollars, and the following twelve or fifteen dollars.

Q. Is that plantation "Fé" also washed by the river?

A. No, sir.

Q. Is there any very great difference between the good quality of the land of the plantation "Fé" and the good quality of the land of the "Cercado Ramirez?"

A. There is some difference.

Q. But is that difference little?

A. No, it is not very little.

Q. Is it not a fact that the good quality of land of the "Cercado Ramirez" compares favorably with the good quality of land of the adjoining properties, including your own?

A. Yes.

Q. Mr. Pereyó, do you pretend to give us the value per acre of the "Cercado Ramirez" from the knowledge that you had in 1902, or from the knowledge that you acquired while you were lessee of that property?

720 A. The value of the property in 1884 is the same that it had in 1902.

Q. Then you base your opinion on the value of the "Cercado Ramirez" in 1902 upon the knowledge that you had of it in 1884, do you not?

A. It is the same; it has not suffered any change. Neither did the market value change any.

Q. Isn't it a fact that in 1902 Mr. De Ford, Mr. Oyanguren, and perhaps another, went to Naguabo for the purpose of acquiring a site for the purpose of the establishment of a sugar central over there?

A. Yes, it is true.

Q. Were there any other investors besides those gentlemen who had in prospect the establishment of a central?

A. I only knew of De Ford.

Q. Did he go there for the purpose of purchasing lands?

A. No, for the purpose of setting up the factory or machinery building.

Q. Was there another gentleman named Mr. Bass, an American from Santo Domingo, who was also a prospective founder of a central?

A. Bass went there right about the time of the invasion with the view also of setting up a sugar factory; he worked a little in building a railroad and purchasing rights of way, but I do not know that he offered to buy any property.

Q. Do you know if Mr. De Ford and Mr. Oyanguren went to the house of Messrs. Garzot & Fuertes for the purpose of establishing a central there?

721 A. They went there for the purpose of setting up the factory at Naguabo, and the place where they were was at my house; I was their agent to obtain for them the "medianeros" or planters.

Q. Whose agent?

A. Agent of De Ford and afterwards of Shepherd Vanderbilt.

Q. Was he another prospective investor in sugar cane lands?

A. That gentleman went there with De Ford and Oyanguren; he was in partnership with them.

Q. Did you, as agent of De Ford and Oyanguren, consult with Mr. Garzot and Mr. Fuertes as to their willingness to become planters of the central and so report to your principals?

A. Yes, I spoke with them.

Q. What did they say?

A. Messrs. Garzot & Fuertes had several properties in Naguabo and they proposed to plant cane if the central was set up; but soon afterwards it was learned that the machinery was not going to be set up.

Q. In what month was that of 1902?

A. I couldn't tell you about that.

Q. More or less, you think it was in the beginning of the year?

A. I couldn't give you an accurate reply.

Q. Was it in March or April?

A. I could not tell you.

Q. How many acres did you request Garzot & Fuertes to plant with cane?

A. No particular n[illegible]er, whatever number they wanted to.

Q. How man[illegible]id they propose to plant?

722 A. None whatever; they remained in expectation.

Q. As to what properties did your conversation with them as to the prospects of planting cane refer to?

A. With regard to no particular one; to whatever they wanted to plant.

Q. There was no particular property mentioned then?

A. No, sir.

Q. Is the San Cristobal Sugar Company the result of the enterprise undertaken by De Ford and Oyanguren?

A. I do not know.

Q. Who is the founder of the San Cristobal Sugar Company?

A. I don't know.

Q. Do you know whether or not Mr. Bass is interested in it?

A. I do not know that either.

Q. What is the other central that is about to be erected in Naguabo?

A. I do not know of any.

Q. In Humacao?

A. "Pasto Viejo."

Q. Which one?

A. Humacao Sugar Company.

Q. Is that the one that was undertaken by Mr. Bass?

A. I do not know.

Q. Don't you think that the prospective establishment of these two centrals has greatly increased the value of lands suited for the cultivation of cane?

A. Yes, sir, of course.

Q. At what rate? Do you think forty or fifty per cent., or more, or less?

A. The proposition is this: Lands which were worth from
723 forty to fifty dollars per acre are now valued at seventy to eighty.

Q. While you were the agent of De Ford & Oyanguren did you actively interest other people in the planting of cane?

A. Several parties, yes, sir.

Q. It was a matter publicly known in the vicinity that centrals were going to be erected and that De Ford and Oyanguren were looking for planters, was it not?

A. Yes. Even the newspapers mentioned the fact.

Q. Even the papers published articles encouraging farmers in this vicinity to plant cane?

A. Yes.

Q. You have been the Secretary of the District Court of Humacao?

A. Yes.

Q. In what years?

A. Last year.

Q. 1904?

A. Yes.

Q. When did you take charge of your position?

A. July 1st, 1904, and ceased on the first of January.

Q. Prior to that time did you live in Naguabo or Humacao?

A. On the thirtieth of June I was living in Naguabo, and on the first of July I was in Humacao.

Q. Did you come with Mr. Fuertes and Mr. Maeso this morning from Naguabo to Humacao?

A. Yes.

Q. Who spoke to you about coming to Humacao?

A. Summoned me as a witness?—Mr. Fuertes.

724 Q. Did Mr. Fuertes request you to come here to Humacao as a special favor to testify for him?

A. Yes.

Q. And you have come to testify out of friendship that you profess toward him?

A. Yes.

Q. To please him and to do him that favor?

A. No, sir, to tell the truth.

Q. But your trip to Humacao has been made upon his request?

A. Yes.

Q. Did he tell you what your testimony would be about?

A. No.

Q. Did he tell you that you were coming here to appraise the "Cercado Ramirez" in 1902?

A. No, sir; he asked me to come here as a witness; that he needed me to testify before a certain court here.

Q. He never mentioned to you "Cercado Ramirez" before?

A. No, sir.

Q. So this line of testimony here regarding the "Cercado Ramirez" comes as a surprise to you?

A. Yes.

Q. And how did he know that you knew anything as to the value of the "Cercado Ramirez?"

A. I couldn't tell you that.

Q. Didn't you think it rather strange that his lawyers should ask you only as to the value of the "Cercado Ramirez" if Mr. Fuertes never mentioned it to you or asked you whether you knew anything as to its value?

A. No, I do not find it strange. In view of the fact that they knew my conditions I do not find it strange.

725 Q. There was not a word said in the carriage as to the "Cercado Ramirez?"—As to any of the properties in litigation.

A. No, sir.

Redirect examination:

Q. This sale that was made of the plantation "Fé," did it include anything more than the land?

A. Cane, oxen, sugar-cane machinery, dwelling houses, bagasse sheds, and some other small fruit lands, horses and carts.

Q. Did it include a complete sugar mill?

A. Yes.

Q. This proposition of De Ford and Oyanguren you say lasted only a month?

A. Something like a month.

Q. What happened at the end of that month?

A. Then definite knowledge was obtained that no sugar central was going to be erected—that is, that the proposition was a failure.

Q. Now, at the time of the sale to Garzot & Fuertes, did you know about it right after it?

A. Yes, I was acquainted with it as everybody else; it was of public notoriety.

Q. Now can you tell us whether the failure of the efforts of De Ford & Company was before or after the purchase by Garzot & Fuertes?

726 A. I do not remember.

Q. And these propositions of Bass, did anybody in the community ever attach any importance or confidence to them?

A. From the beginning nobody attached any importance to the propositions or the intentions of Bass; because at that time I was a planter and the first favor that Mr. Bass did to us planters was to increase the wages from forty cents to seventy and eighty cents per day; he doubled the wages, for which reason I think he was crazy.

Q. With the exception of this month during which De Ford and Oyanguren were working was there any change in the value of land on account of any proposed central up to 1903 when you sold your property?

A. No, sir, there was no change; there was no time for any increase or changes, the transaction was so quick.

Recross-examination by Mr. HERNANDEZ:

Q. You have testified that you did not attach any importance to the enterprise of Bass. Was the enterprise of De Ford and Oyanguren much more important?

A. At the beginning it was given more importance owing to the fact that the proposition was made by De Ford who has a central at Aguirre, and in view of the parties who surrounded him, Mr. Lowrie, Mr. Shepherd Vanderbilt, Mr. Oyanguren, the effect of the prestige of these gentlemen lasted a month, but it fell through
727 right away upon the proposition falling through in the United States and the news arriving here by cable to De Ford & Company.

Q. Soon afterwards did the propositions begin again which have culminated to-day in the establishment of a central?

A. That business sank from sight altogether right away; it was absolutely out of view. After the purchase of the plantation San Cristobal, the day on which they came to take possession of it, the purchase was known; before that nothing was known.

Q. When was that purchase made?

A. In the latter part of last year.

Q. It was sold to whom?

A. To a company under the name of the San Cristobal Sugar Company.

Q. You have testified that Mr. Bass was considered crazy; was it because of his extravagant expenditure of money in that vicinity?

A. Yes, sir.

Q. How much, more or less, do you think he spent there?

A. He didn't spend; he threw away.

Q. How much money do you think he threw away?

A. Twenty to twenty-five thousand dollars, understanding always that sales were made to him of either rights of ways, or he would cause the ruin of the planters by putting up wages and paying high or increased wages to laborers or peons.

Q. Did he pay extravagant prices for those rights of way?

A. I don't remember the prices he paid for them because he didn't buy any from me.

Q. He paid extravagant wages, did he?

728 A. Yes.

Q. He increased the price of everything in that vicinity?

A. At least the wages.

Q. Don't you know the ex*h*orbitant prices that he paid for those rights of way?

A. No.

Mr. PETTINGILL: Did the prospective ruin of planters by the high wages increase the value of the land?

A. There were no purchasers and there were no sellers; no offers one way or the other.

Mr. HERNANDEZ: But he was purchasing rights of way, was he not?

A. Yes.

Witness excused.

RAFAEL ROCCA NAJERA, witness called on behalf of defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

729 Q. What is your name?
A. Rafael Rocca Najera.
Q. Where do you live?
A. At Naguabo.
Q. How long have you lived there?
A. My age—fifty-nine years.
Q. What, if any, official position do you hold?
A. I am Alcalde of Naguabo.
Q. How long have you been Alcalde.
A. Five months.
Q. Outside of that, what is your ordinary occupation?
A. Agriculturist.
Q. Are you a property owner?
A. Yes.
Q. What kind of property?
A. I have cattle, houses,—a little of everything.
Q. Are your lands situated in the jurisdiction of Naguabo?
A. Yes, sir.
Q. And of what extent,—how many acres of land have you?
A. One of the properties that I have is ninety-two acres.
Q. Have you rented real estate in times past?
A. Yes, sir, several estates, the best ones of Naguabo.
Q. From your business transactions during the last five or ten years have you been well acquainted with the values of real estate within the jurisdiction of Naguabo?
A. Yes.
Q. Do you know the property called "Cercado de Ramirez?"
A. Yes.
Q. How long have you known that?
730 A. I have known it for a good many years, I had it once leased.
Q. In what year was it that you had it leased?
A. During the years 1884 and 1885.
Q. Just after or just before it was leased to Pereyó?
A. About the same time; I think I had it first.
Q. Have you remained acquainted with it from that time to the present?
A. Yes, I see it daily.
Q. What, during those years, up to 1902-1903, we will say, purpose was that property used for?
A. It has always been devoted to cattle.
Q. Do you know the time the purchase was made of that property by Garzot & Fuertes in 1902?
A. I couldn't give you accurately the date or the year; it was a matter of two or three years.
Q. Did you know at the time, of the purchase of it? Did you have knowledge of it?

A. Yes, sir, I have known it for a good many years; I had it leased.

Q. I refer to the sale to Garzot & Fuertes: At the time that was made, did you know of it?

A. You mean the "Cercado Ramirez" or the portion of it that they purchased?—The question that you ask me—do you
731 mean to include the whole of the property or that portion of it which was sold to them?

Q. I will explain: For the purposes of this case we have called the "Cercado Ramirez" the tract of three hundred and fifty acres which Garzot & Feurtes purchased; the other parts of that property being known by their special names of "Cercado Maldonado," "Los Puentes," "Islote Rivalta," etc.

A. All right; then the question is simply with regard to the three hundred and fifty acres.—

A. (Continuing)—The three hundred and fifty acres I value them at from forty to forty-five dollars per acre. Can I say why I make that appreciation?

Q. Yes, I was going to ask you that?

A. I can put a value to them because in 1884 I had occasion to purchase that finca.

Q. You did not, as a matter of fact, buy it, did you?

A. No, sir. Let us clear up that point; I am beginning to understand the question now: I intended to buy that finca together with the other lands of which it is composed, all of which together make a total of twelve or thirteen hundred acres, of which there are some acres of a better quality of land.

732 Q. Your reply that the land was worth forty to fifty dollars per acre referred to what year?

A. I referred to the last eight or ten years.

Q. It has been worth at any time during those years——?

A. From forty to fifty dollars, yes, sir.

Q. Explain briefly the kind of land that composes that three hundred and fifty acres?

A. The nature or quality of those lands, being devoted, as they have always been, to cattle, that business has always had an unfortunate alternative, that is they have always been on the decline, and owing to the great floods of the river to keep cattle on those lands was dangerous; and as regards sugar cane there has never been any hopes in Naguabo of that property being devoted to cane because they are not in condition to be devoted to such on account of the floods of the river interfering with it; the land is very low. Of course, included within the area of that land there are some tracts or portions of it which are good for cane.

Q. About how many acres, in your judgment, are good for cane?

A. Let us figure it from fifty to sixty acres, selecting that part of the property furtherest away from the river—the highest.

733 Q. Are you acquainted with the property that is called "San José de las Mulas?"

A. I know some portions of it.

Q. Do you know about the area of that plantation, more or less?

A. More or less 600 to 700 acres; that is the acres I am acquainted with, those nearest the road.

Q. I meant the total area of it?

A. The total, I don't know how much it might be.

Q. Those six or seven hundred acres that you know, how do they compare in quality with the "Cercado Ramirez?"

A. In "Las Mulas" there are portions of land that are better than "Cercado Ramirez" for the cultivation of cane, yes, sir, much better; a man acquainted with the farming business would be compelled to appreciate it.

Q. How many of those six or seven hundred acres of "Las Mulas" with which you are acquainted are good for the cultivation of cane?

A. In my opinion not less than two hundred acres; the land is good, and cheap to cultivate.

Q. Do you know "Culo Prieto" also?

A. Yes.

Q. What kind of land is that?

A. Part of it is good, very good; there is another part of it that is very bad.

Q. How much is the acreage of that?

A. I don't know, and curiously enough I have had it leased; there are quite a good many acres, more than a hundred acres.

734 Q. Is that cane land of "Culo Prieto" as good as "Cercado Ramirez?"

A. The "vega" or low land of that property is as good as the "Cercado Ramirez."

Cross-examination by Mr. HERNANDEZ:

Q. Mr. Rocca, give us the boundaries of the "Cercado Ramirez?"

A. On the north by the river Blanco, and also on that same side with lands of the same finca known as "Islote Quiñones," divided by the river.

Q. On the east?

A. Barrio "Rio" and lands of Mr. Arturo Gallardo. The boundaries are not very accurate or exact; they are erroneous at times.

Q. You don't think they are important?—They are not material?

A. Well, for the purpose of identifying the finca as a witness, yes, because in order for a man to testify as to anything of the sort as to knowing a finca it is very natural that he should know the boundaries.

Q. Well, after this little interruption let us go ahead. Let us have the boundaries on the east?

A. Lands of Mr. Gallard, lands of the same estate and a country road which crosses the property through the centre.

Q. That is all the boundaries on the east? There are no more.

735 A. Yes, sir, there are other lands; right after that there are some small tracts of land belonging to several parties.

Q. I don't care to know the names of owners unless they are abut-

ting owners. All I ask you is to give me the names of the owners of property on the east?

A. Of the same property there is a small tract; after that comes a property recently purchased by Mr. Marcelino Borges, and another piece of land belonging to the former heirs of Lebrón; after that comes the river, the same river Blanco, and on the other side are lands of the estate of the heirs of Rios, where the "Islote Rivalta" is situated.

Q. On the south what are the boundaries?

A. On the south are lands of "Las Mulas" plantation.

Q. What else?

A. Exactly on the south I cannot tell, but on the south it bounds with the property of Gallard and Villamil.

Q. That is all?

A. That is all.

Q. On the west?

A. That is all; I cannot give you the boundaries; it would be necessary for me to be a surveyor.

Q. On the west?

A. There is the estate of Mr. Villamil known as "San Hilario" and Gallard.

Q. I am going to read to you the boundaries of the "Cercado Ramirez" as they appear upon the deeds of sale made by Palmer to Garzot & Fuertes, and want to give you an opportunity to refresh your memory in order to enable you to make all the corrections you want: (Reading) "Land situated in the barrio of Rio Abajo,
736 bounded on the north by lands of Don Juan Burzó, on the east by lands of Don José Perez Villamil, at present Don Prudencio Barriola, a ditch between, formerly Don Francisco Burzo, by lands of Don Juan R. Garzot and Don Ramón P. Villamil, formerly Don Francisco Burzó, or up to a place near the mouth of the river Blanco; on the south by the river Blanco which separates it from the lands of Don José del Carmen Borges and Don Prudencio Barriola, and the property named "Lugar de los Puentes" belonging to Doña Manuela Gutman widow of Bustelo, and on the west by the river which separates from the plantation named "Madam Duran" belonging to said lady Gutman and by lands of the Succession Don Ramón Argueso, formerly Don Pedro Lebrón, and besides by a part of the arm of the river Viejo which separates it from "Islote Rivalta" belonging to said Lady Gutman."—Now, do you want to make any corrections to your answer?

A. I would not undertake or dare to correct those boundaries because I could not do it, but there is a great deal of truth in the statement you have just read.

Q. You mean then that the boundaries which you gave us are not the correct ones, that you were mistaken, and that the boundaries that I have read to you are the correct ones?

A. No. I could not give an opinion as to which ones are the true ones. What I do is, according to the knowledge I have, to give you the boundaries that I understand according to my knowledge; because among the boundaries cited by you I have not heard one of

them that I understand on the north side; on the north there are sixty acres of land now held under lease by Mr. Gallard and
737 the town and Burzó has some one hundred and fifty to one hundred and seventy acres also on that side of the property. I think the boundaries as you give them are correct.

Q. Now you think that the boundaries that I have just read to you are the correct ones and not the ones that you mentioned?

A. Which are the ones that I have given?

Q. Those that have been taken down by the stenographer. (To stenographer:) Please read his answer to him so that he may make the explanation or correction which he desires.

Questions and answers appearing on pages 153 and 154 were here read to the witness.

WITNESS: I am mistaken.—Now just wait a moment, those are not the boundaries of the "Cercado Ramirez." You talk also about "Culo Prieto" and got the two confused; I am very well acquainted with that land and I know it just as well as I do my own town. We set it down as jurisprudence that "Cercado Ramirez" has three hundred and fifty acres; if you ask me for the boundaries of the "Cercado Ramirez" those that I will give you will not be exactly the boundaries of the three hundred and fifty acres; but taking the estate as you gave it we can apply to the same boundary lines.

Q. Then the value that you gave us was not the value of the lands which were or are included within the boundaries that I have just mentioned to you?

A. Yes, I was asked what value I would give to those three hundred and fifty acres; now among those three hundred and fifty acres there are some tracts of land to which I put a certain value; there are lands in there of three or four different qualities.

738 Q. But how are you going to give us the value of the land included within the boundaries that I have just mentioned to you if, in the first place, you do not know the boundaries, and, in the second place, as you have testified, you got mixed up with the property called "Islote Quiñones?"

A. No, I have not got mixed up with "Islote Quiñones"; when we mentioned the plantation "Culo Prieto" looking for the boundaries of the finca it was that we said something about "Islote Quiñones" which is about the best part of the estate.

Mr. HERNANDEZ: I request the Examiner to read to the witness his former answer where he admitted that he got mixed up with the "Islote Quiñones."

The Examiner then read the answer of the witness on page 156 commencing with the words "I am mistaken," and ending with the words "same boundary lines."

WITNESS: We are ta-king about both north and south pole; we are talking about "Culo Prieto" which is far away in this (indicating) direction and the other estate is on the opposite extreme end.

Q. That is why I want to give you this opportunity; I want you to correct your statements and make clear which property you are

assessing, because you have had in mind the boundaries of "Culo Prieto" when you were assessing the "Cercado Ramirez."

A. I? No, I have not made a mistake; I may have been misunderstood but I couldn't make a mistake as to the value of the property; if I am asked how much are the three hundred and fifty acres worth, I can give the price as forty to fifty dollars per acre.

739 Q. I am not questioning the fact that you testified that you valued the property of three hundred and fifty acres at from forty to fifty dollars per acre. What I ask you to do is to explain the contradiction between the boundaries given by you of this three hundred and fifty acres and the boundaries given by the deed.

A. The boundary lines of the three hundred and fifty acres are the following: I am able to give you the boundaries of the 350 acres, accepting as true the fact that the 350 acres constitute the "Cercado Ramirez," which, in my opinion, is a blunder; the 350 acres—I wish you knew the land—that is where I am confused; there are two different or separate parcels of land; there is a portion of land which does not bound on the four points of the compass but I can say the following: On the north are situated the sixty acres belonging to Mr. Gallard, the dwelling house of the property; on the south is the sea——

Mr. PETTINGILL:

Q. Finish the north.

Mr. HERNANDEZ: That is the thing.

WITNESS: The town and lands of Burzó, I think.

Q. Are you sure that is the boundary on the north of the property you are assessing and which you think is the "Cercado Ramirez?"

A. Accepting the three hundred and fifty acres as being the "Cercado Ramirez."

Q. Well, we are not disputing the fact that the "Cercado Ramirez" is composed of three hundred and fifty acres.

A. Well, but in giving the boundary lines of "Cercado Ramirez" as you have, as composed of 350 acres, anybody, unless

740 he is a surveyor, is liable to make a mistake.

Q. Well, the deed recites that the only boundary on the north is the lands of Don Juan Burzó: How do you explain this contradiction?

A. On the north are situated the sixty acres of land of Mr. Gallardo.

Q. Which one is correct, the deed or you?

A. I think that I am correct and the deed is mistaken; that would not be anything extraordinary; if you go to that place and find your situation you will find that to fix a number of acres of "Cercado Ramirez" is a blunder; "Cercado Ramirez" is a property composed of 110 or 120 acres; that which you call "Cercado Ramirez" is composed of three portions of land; I have for sometime heard people talk about the boundary lines of that finca and I have always held different opinions.

Q. You don't agree with the deed?

A. With some of the boundaries given, I think they are wrong.

Q. Then the "Cercado Ramirez" you have in mind is a parcel of land composed of one hundred and ten acres. Is that it?

A. More or less, yes, sir.

Q. But you do not know this parcel of three hundred and fifty acres?

A. I have never measured them but I know there are three different portions of land; there is a lot or portion of land which is separated from "Cercado Ramirez;" that is why I do not get the boundaries correct.

Q. Then in your opinion the "Cercado Ramirez" is one entire property?

741 A. What I know as "Cercado Ramirez"—and I have had that "Cercado Ramirez" leased for a number of years—is a parcel of land that is way out near the ocean—of low land.

Q. How many acres was that that you had leased?

A. I used to put there 140 to 150 head of cattle; I never measured or surveyed the land.

Q. More or less, how many acres did you have leased during those years?

A. That property is composed of a portion of land called "Cercado Ramires;" another is called "Cercado la Casa," and there are some thirty acres of marshy land, more or less; I have not measured it.

Q. How many acres, more or less, did you have leased in 1884 from Mr. Bustelo?

A. Let's not have Bustelo as having the property he leased to me because I don't know if it was Mrs. Manuela as representative of the heirs of Rios——

Q. You testified that you had the "Cercado Ramirez" leased for a certain time: What I want to know is, in what year you leased it, from whom you leased it, and how many acres you leased?

A. Then I must reply to you that I never leased "Cercado Ramirez;" that I have leased all the property where "Cercado Ramirez" is situated.

Q. In other words, the "Cercado Ramirez" was included in the property that you leased?

A. Yes.

Q. In what year was that?

A. In 1882 until 1884; I had it for four or five years.

742 Q. Don't you know if it was for five years or one year?

A. I had it leased for terms of two years and afterwards I sub-leased it.

Q. You have testified just now that the "Cercado Ramirez" was included in that property?

A. Yes.

Q. How many acres did the "Cercado Ramirez" contain?

A. I did not measure them for the purpose of leasing them.

Q. You do not know whether it is twenty acres or one hundred acres or one hundred and fifty acres, or what?

A. I leased the whole property belonging to the heirs of Rios, which, in my opinion, measured from twelve hundred to twelve hundred and eighty acres, and if they survey it again I do not believe they will get that same number of acres.

Q. We know that you leased about twelve hundred acres, but we do not know yet that you know how many acres the "Cercado Ramirez" contains?

A. I will explain that——

743 Q. You cannot state the number of acres contained in the "Cercado Ramirez" when you leased it, can you?

A. No. I did not lease any particular number of acres, I leased the whole property. They told me that it contained thirteen hundred acres, more or less.

Q. After 1884 up to the present time have you been in possession of any of the estates of the succession of Rios?

A. Always.

Q. Which one of them?

A. Of all of them.

Mr. PETTINGILL: He didn't understand the question.

Q. (Question repeated.)

A. Yes, sir, because I have been engaged in the lands and the property since that time.

Q. I do not think you understand the question. (Question repeated as above.)

A. Directly, no; as lessee, no; but having intervention in the lands, going through them and going in and out of them and being engaged in them, why, yes, sir.

Q. What you mean to say is that you have gone through the properties after you left them as lessee, don't you?

A. Yes, I have had occasion to do that.

Q. Now if you do not know the number of acres contained in the "Cercado Ramirez" and you do not know its boundaries, how can you arrive, in your mind, at the opinion that the properties of this "Cercado Ramirez" are, or were worth in 1902 from forty to fifty dollars per acre?

A. I have not said that. I know the metes and bounds of

744 the "Cercado Ramirez," and I know that land, and I have appraised it for the purpose of buying it.

Q. We are not going again over the boundaries of the "Cercado Ramirez" and over the number of acres, because we have been over that question a good many times and the more we go over it the more confused it is. What I want you to do is to answer me. How do you arrive at that opinion of the valuation you have made of the properties included within imaginary lines of which you have not given us the name?

A. I base my opinion in the first place that they are the levellest lands on the whole property where all the waters empty, that in my opinion I always devoted them to cattle and inasmuch as that business was not promising—because, by the way, I have lost a good deal of my fortune in that enterprise—it was a logical consequence that

the land at that time was not worth more than the figures I have already given.

Q. So that the valuation that you have put upon that property depends entirely upon the fact that in your opinion the property was dedicated to cattle raising and that the cattle industry at that time was not very promising, but did not take into consideration the number of acres nor its boundaries?

A. Of course the number of acres and the boundaries have nothing to do with the value that the property may have. Can I say something in addition to that?

Q. Yes.

A. But supposing that somebody may think of appraising that land having in view the planting of cane, my opinion would be different, because if I had my way I would not plant one
745 single acre of cane there.

Q. That is a wrong opinion, and your own way; that is not the opinion of the owner of the finca who has testified that two hundred acres of that property can be planted with cane. Mr. Rocca, are you at present, or have you been, a partner in business with Messrs. Garzot & Fuertes?

A. I was at one time.

A. How long ago?

A. Some seven or eight years ago.

Q. Dedicated also to the cattle business?

A. Yes, sir.

Q. At present are you working for Garzot & Fuertes in any capacity?

A. Yes, I am an employé.

Q. You are employed by them?

A. Yes, but I don't have any share of any of that.

Q. How much salary do you get from them?

A. One hundred dollars. But ask me why I get that much. Not because I am worth it but because they want to give it to me in view of the fact that I have lost all my money at that place and they don't want to fire me out now.

Q. Do you live at the plantation?

A. No, I live in town.

Q. That salary you get is to attend to the cattle business is it not?

A. Yes.

Q. They still keep up that business, do they not?

A. I wish I could give it up and devote myself to something else.

Q. How long have you been dedicated to that business?
746 A. Not less than thirty years, unfortunately.

Q. And up to this time you have not given up the business although you think it is a very poor one?

A. I have not given up the business because I still have a few cows, but as soon as I get rid of them I will give it up, and it will not be very long before I do, and then I will just close up.

Q. Are you in current account with Garzot & Fuertes?

A. My account current is that at the end of the month they pay me; work done and money obtained.

Q. Do you owe them any amount?
A. No.—Wait a minute—Not a quarter.
Q. They do not owe you anything on account?
A. No. This gentleman (pointing to Mr. Fuertes who is present) himself once in awhile loans me some money, individually, but Garzot & Fuertes never. I do not owe them anything.
Q. You are a very intimate friend of Mr. Fuertes?
A. Yes, we are very friendly.
Q. Related?
A. No.
Q. That cattle that you keep there and raise is for export, is it not?
A. I don't export any; I sell right in the country.
Q. I mean the cattle kept by Garzot & Fuertes, which you look after?
A. At times it is exported from the country and sometimes it is sold right here.
Q. Exported to where?
A. To the English West Indies.
747 Q. And for Cuba also?
A. Not for a good many years.
Q. You testified that this part of the "Cercado Ramirez" that you leased in 1882 was the very level land—the most level; the other parts of the property which you leased in Naguabo from the Sucesión de Rios were better lands, higher, were they not?
A. Yes, portions of them are higher.
Q. They are better lands than this part of the "Cercado Ramirez?"
A. For sugar cane, yes, sir; I should say they are.
Q. Are they any good for cane planting?
A. I should say they are; there is a portion of them very good.
Q. Of the very best land that can be found in the district of Naguabo?
A. Not exactly of the very best because there are other estates superior.
Q. These other properties that you had leased from the Sucesión Rios which you say are better, how do they compare with the best cane lands of the jurisdiction of Naguabo?
A. That finca of the Sucesión of Rios picking out the very best portions of it may be classed among the best in Naguabo.
Q. Is it not a fact that the good portions of the lands of the Sucesión Rios in Naguabo are much better than the lands that the Sucesión Rios had in the district of Humacao?
A. I do not know the properties of the Sucesión Rios here in Humacao.
748 Q. I am now referring to "Las Mulas" and "Culo Prieto." Is it not a fact that a good portion of the lands of Naguabo are much better than the best portions of "Las Mulas" and "Culo Prieto?"
A. Yes, sir, just as good. The reply I am going to give you to that question I will give it having good grounds upon which to base it, and I am going to explain it as follows: That there are lands which though being of better quality than others yield less.

Q. You mean to say that although the good portions of the lands of Naguabo are much better in quality than the good portions of the lands of "Las Mulas" and "Culo Prieto" yet they yield less?

A. I believe they do.

Q. But they are much better than the lands of "Las Mulas" and "Culo Prieto?"

A. The better portion of the real estate of Naguabo is as good or somewhat better than parts of "Las Mulas" or "Culo Prieto."

Q. But in Naguago the lands of Naguabo have more quantity of good land than the lands of "Las Mulas" and "Culo Prieto," do they not?

A. You must bear in mind that I am giving you a scientific reply to the questions you propound to me, because I am an agriculturalist and I know the business. There are lands in there which produce four hogsheads of sugar and if those lands producing four hogsheads of sugar, if the cultivation thereof costs me one hundred or one hundred and twenty dollars, I obtain less results than if
749 I get in other lands three hogsheads with an expenditure of thirty-five to forty dollars per acre.

Q. I do not think you understood my question; I am going to put it to you specifically. You testified that the lands of Naguabo of the Sucesión Rios leased by you contained more or less about thirteen hundred acres; and supposing that the lands of "Las Mulas" and "Culo Prieto" contained also more or less about thirteen hundred acres, are there more good acres from the thirteen hundred of Naguabo than there are from the thirteen hundred of "Las Mulas" and "Culo Prieto?"

A. That is what I cannot explain, because, in a general way it cannot be explained, because I value or appraise lands according to the productive qualities thereof.

Q. But leaving aside the products of those properties, bear in mind my question and answer me "Yes" or "No" to the last question propounded to you?

A. To devote them to what?

Q. I do not want to consider the product of the property nor the kind of cultivation; I am only considering the quality of the property itself and its value in the market.

A. If I am allowed to pick out or to select the very best of the Naguabo lands of course they are better than "Las Mulas."
750 Q. Is it worth more?

A. Something more. A little more.

Q. How much more?

A. You can figure it fifteen dollars per acre, that is provided you pick out the best; but in a general way by making a purchase of a large tract of land I would not give more value to it.

Redirect examination:

Q. Putting aside the question of the name "Cercado Ramirez," whether it means one hundred acres, or two hundred, or three hundred, do you know the land, the three hundred and fifty acres that Garzot & Fuertes bought from Mr. Palmer?

A. Yes, sir, perfectly well.

Q. Now when you gave us the value what were you valuing, that three hundred and fifty acres or some imaginary one?

A. No, sir, I gave the appraisement of forty to fifty dollars per acre on the lands inscribed or included in that area of 350 acres.

Q. Now speaking of that three hundred and fifty acres, without regard to the points of the compass, whether you mistake the north for the east or anything of that kind, give us the abutting owners and the natural boundaries of that three hundred and fifty acres?

A. It bounds with Garzot, with lands of Ramón Villamil, with lands of Arturo Gallardo, with lands of Juan Buzó Quintano; after the river comes another finca known as "Puentes" bounding with it; lands of the heirs of Argueso. I do not remember more.

751 Q. Is it bounded on any side by the sea?

A. Yes, it is.

Q. On any side by any river?

A. The river runs right through the center of it.

Q. I do not ask you whether it runs through the center. Is it one of the boundaries of it?

A. Yes.

Q. What river is that?

A. The river Blanco.

Q. We talked somewhat about "Culo Prieto." When you spoke of having rented about thirteen hundred acres, was "Culo Prieto" a part of that or not?

A. I think not; I am not sure; there are some eighteen or twenty years since that time; I have had that property "Culo Prieto" leased but I don't remember under what circumstances; I know that on the lower part of it I had some cattle at one time. That property "Culo Prieto," to tell the truth, has only one good piece; the balance is no good at all; I wouldn't give ten dollars an acre for it.

Q. Do you remember how large this piece is that is good?

A. Some fifty or sixty acres. Anybody is liable to make a mistake if asked to give a figure.

Q. It might be 100 acres?

A. It might be eighty acres; I don't like to give an estimate—lands good enough for fifty head of cattle tied up, I wouldn't put another head more nor less.

Recross-examination:

Q. You have just given certain boundaries; where did you
752 get those boundaries from?

A. From the topographical situation of the land.

Q. Did the deed that I have just read to you help to refresh your memory?

A. Of course I have heard among the names mentioned by you reading the boundaries from the deed some of the parties whom I know to be bordering on the land, such as Buzó etc. I can't give you the names, but if I am asked to give you the boundaries according to the points of the compass it would be a different proposition altogether and a very difficult one.

Q. Do you know the number of acres within those boundaries that you have given us?

A. Those boundaries include as much as three hundred and fifty acres.

Q. If there is any difference between the boundaries given by you and those given in the deed which one is correct?

A. I could not correct those given in the deed.

Q. That is not an answer to my question. (Question repeated by the Examiner.)

A. I must show regard or respect for the statements made in the deed, but those given by me are given honestly and according to the best of my knowledge and belief.

Q. When was the last time that you made an examination of those boundaries?

A. I have made an examination of those boundaries on several occasions.

Q. I mean how many years ago,—ten or fifteen years?

A. I have known those boundaries for at least twenty-five years; there have been some changes with the abutting owners because some lands have passed over to new owners.

753 Q. Those are the boundaries that you remember of the property twenty-five years ago?

A. No.

Q. Then, what year?

A. With regard to the lands of Gallardo it is a question of two years or so; the lands of Juan Buxo Quintano have been in his hands for ten or twelve years; those of Garzot is a question of four or five years more or less, and the same with regard to the lands of Villamil, some six or seven years.

Q. So that the recollection you have of those boundaries with the exception of Gallardo dates back fifteen years?

A. Yes, sir, perhaps more than that.

Witness excused.

FRANCISCO NOYA (re-called).

By Mr. PETTINGILL:

Q. I believe you referred in your former testimony to some notes or writing sent to you by the complainant?

A. Yes.

Q. Would you recognize that if it was shown to you?

A. Yes.

754 Counsel for Complainant requests that that part of the testimony of this witness which refers to such writing be read.

The Examiner thereupon read from page 218 of the testimony taken before the Court question and answer as follows:

"By Mr. PETTINGILL:

"Q. When did you see her next about this matter, if you saw her at all?" (Referring to Doña Maria.) "A. After that I used to go

very frequently but I couldn't tell you what we talked about, but I used to go there very frequently. There are a number of documents on file in the Humacao Court in which she stated—letters from her sending for me; those letters are on file.

Q. Look at this (handing document to witness) and see if it is one of those documents?

A. That happens to be one of them.

Q. When was this one received by you as near as you can recollect?

A. I think it was on the seventeenth of January, 1901.

Q. Whose handwriting is that in?

A. Doña María's.

Counsel for Defendants now offers in evidence the letter referred to, which constituted page 35 of the record of a suit in the district court of Humacao brought by José María Cuadra against María Rios y Gutman, widow of Rubio, for the collection of money in the year 1901, and because said letter forms a part of said record counsel asks the Examiner to copy the same into this record as a part of the testimony herein, leaving the original in said record where it properly belongs.

The original of said letter, in the Spanish language, is as follows:

755 "Paco: Me quedé esperandolo. Haga favor de venir ahora mismo acá. Estoy ya contenta por que me he convencido y tiene U. razon. No deje de venir.

"Su affa.

"MARIA."

Which said letter being translated into the English language by the interpreter, read as follows:

"Paco: I remain waiting for you. Do me the favor to come here right now. I am now contented because I am now convinced, and you are right. Do not fail to come.

"Yours sincerely,

"MARIA."

Q. Who is the "Paco" to whom this is addressed?

A. Myself.

Cross-examination waived.

Witness excused.

756 JOSE MARIA ROLDAN, witness called on behalf of defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your name?

A. José María Roldan.

Q. Where do you live?

A. In Naguabo.

Q. How long have you lived there?
A. I don't remember how long; I used to live at the Playa of Naguabo. I afterwards moved to the town.
Q. Have you lived in the jurisdiction many years?
A. Yes, sir.
Q. Do you know the plantation called "San José de las Mulas"?
A. Yes.
Q. Have you ever rented any part of that?
A. Yes.
Q. When did you first rent a part of it?
A. I leased one of the enclosures for cattle, I think it was in 1892; I don't remember the month. 1892! No. It was in 1902.
Q. How many acres were there in that "Cercado"?
A. I could not tell you.
Q. More or less?
A. No, sir.
Q. From whom did you rent it?
A. From Doña María.
757 Q. You still have it leased?
A. Yes.
Q. And to whom do you pay the rent?
A. To Doña Maria.
Q. Who else rented parts of "Las Mulas" in 1902 when you rented it?
A. Don Prudencio Barriola also leased some of the enclosures for cattle at the time.
Q. Anybody else that you remember?
A. No, sir, because I leased one of the enclosures for cattle, Barriola leased two and the balance was held by Mr. Emilio Faura.
Q. Are those two gentlemen still leasing the other parts?
A. As to Don Emilio Faura I don't know whether he has it or not; I don't know.
Q. Are there any other lessees there now?
A. Inasmuch as the property was divided up those gentlemen only have two of the enclosures, "Vagón" and "La Marquina;" they *have* two more enclosures, "Martinique" and "Las Mourailles" but I don't think they have them now.

Counsel for complainant moves to strike out the testimony of this witness relating to transactions not known to him of his own knowledge, and all that testimony which refers to transactions and properties which are not the subject of this litigation in this suit.
Granted as to first ground.
Denied 2nd.

Cross-examination by Mr. HERNANDEZ:

Q. What are the enclosures that you have leased of the
758 plantation "Mulas?"
A. The enclosure "Poyal" that I leased and that I still hold by lease; I once upon a time sublet the enclosure of "Vagón" to Don Emilio Faura.

Q. How many acres, more or less, does the enclosure "Poyal" contain?

A. I couldn't tell you that.

Q. Do you think it contains more than one acre?

A. Of course.

Q. Do you think it contains two hundred acres?

A. I could not tell you the number of acres because I have not surveyed it nor have I seen any survey made of it.

Q. I am not asking you for the exact number of acres contained in that enclosure, but I want to know more or less the extension of the land of the plantation "Mulas" that you possess as a lessee?

A. I couldn't tell you as I don't know the extent of the land.

Q. Do you think it contains one thousand acres?

A. No, sir.

Q. Do you think it contains five hundred acres?

A. No, sir.

Q. Do you think it contains four hundred acres?

A. I don't know; I don't know how many acres there are because there is also some woodland; I don't know the area of that enclosure.

Q. Do you think it contains more than three hundred acres?

A. I couldn't tell you.

Q. Do you think it contains two hundred?

759 A. I don't know.

Q. Do you know if it contains less than one hundred?

A. No, sir, less than one hundred it hasn't got; I couldn't tell you the number.

Q. Do you think it is more than one hundred?

A. I don't think it is more than a hundred, but I believe, I am not sure, but I believe it has one hundred acres.

Q. You are not sure if it has more than one hundred?

A. No, sir.

Q. You are not sure whether it is five hundred or one hundred, are you?

A. No, sir, inasmuch as I have not surveyed it I cannot tell the number of acres there are.

Q. You are not sure whether it is more than fifty acres, are you?

A. Yes, it is more than fifty acres.

Q. Are you sure of that?

A. It is more than fifty acres.

Q. You haven't measured it, have you?

A. No, sir.

Q. You are not sure that it has more than 50 acres?

A. More than fifty, yes, sir.

Q. Then it must be between fifty and one hundred?

A. I know it is more than fifty but the number of acres it has I cannot tell you, because, as I say, I have not surveyed it. Have I said that it is one hundred acres?

Q. What is your recollection of what you have said?

A. I said that I didn't know the number of acres it has.

Q. How do you pay for that enclosure?
760 A. By the month.
Q. Do you pay per acre?
A. No, sir.
Q. How?
A. For the enclosure.
Q. The whole of it?
A. Yes, sir.
Q. So you are paying for a piece of property without knowing if it has fifty acres or five hundred acres?
A. I don't know the number of acres; exactly I cannot say the number of acres it contains; you know unless you survey a property you cannot tell how many acres it has.
Q. As far as you know it might contain five hundred, no? What is your answer to the question?
A. No, sir; I have said to you that I do not know the number of acres it has. I do not know the number of acres the plantation has.
Q. Why is it that you do not want to testify as to the number of acres that you have leased, showing such a failing memory?
A. I cannot testify as to that point, I do not know how many acres the "Cercado" measures; you can ask the lady owner of the property to show me a plan of the property in order to be able to tell you how many acres it has.
Q. Are you such a careless business man that when you are going to lease a property you do not know whether you lease fifty or five hundred acres of land?
A. No, sir, I have not paid any attention to the number of acres the property has inasmuch as I never thought it was necessary.
761 Q. Now let us know whether you know whether you have leased mountain land or level land, or whether there is any river crossing the property?
A. There is a brook in there of very little supply of water; in case of flood there is a brook crossing through it.
Q. Do you know whether it contains level or mountain land?
A. That enclosure "Poyal" is all low land; the enclosure that I have is all low land.
Q. But you have just testified awhile ago that you could not know the number of acres that the enclosure contained because they were mountains. Let us know clearly whether there are mountains or not in that enclosure?
A. I have not said that it is mountains or hills; what I mean to say is that it is brushy or woodland.
Q. If it were all level land it would be very easy to find out how many acres of land it contains?
A. No, sir, unless you surveyed it you could not tell; you cannot tell the exact number of acres unless you measure it.
Q. To what is it dedicated?
A. Which enclosure?

Q. The "Cercado Poyals?"
A. Cattle.
Q. Whose cattle is it?
A. The cattle there now is a part mine and a part belongs to Mr. Perfecto.
Q. Do you keep cattle there for Garzot & Fuertes?
A. No, sir. I don't know if there is a head of cattle—there might be one head of cattle there. Inasmuch as I have some cattle belonging to Mr. Fuertes I would not be surprised if there is
762 some; there might be some mixed up with the herd. I have other enclosures adjoining and it may be that the cattle from those enclosures have passed over there.
Q. Where do you keep the cattle that you have of Mr. Fuertes?
A. In "Los Puentes."
Q. Are you in partnership with him in the cattle business—with Mr. Fuertes?
A. Yes, sir, I have cattle belonging to him to divide up the profits.
Q. Are you at present to-day in partnership with him in the cattle business?
A. I have some of his cattle, yes, sir.
Q. He called you to testify, didn't he?
A. Yes.
Q. Mr. Fuertes?
A. Yes.
Q. When did he call you?
A. To-day.
Q. Is he paying your expenses here in Humacao?
A. Who?
Q. Mr. Fuertes.
A. No, sir.
Q. Is he paying the hotel for you?
A. No, sir.
Q. Put the question to him again; I don't think he understood the question. (Q. "Is he paying your expenses here in Humacao?" repeated to the witness.)
A. No, sir, I pay my expenses wherever I go.
763 Q. I mean now, to-day, in Humacao?
A. No, sir.
Q. When did you arrive here?
A. When I arrived?
Q. Yes.
A. I don't know what time it was; I don't know the exact time.
Q. Was it this morning?
A. It might have been ten o'clock, I don't know exactly the hour it was.
Q. Did he tell you what he wanted you to testify for here?
A. No, sir.
Q. What did he tell you that you were going to testify about here to-day?
A. Who was?

Q. What did Mr. Fuertes tell you that you were coming here to testify about?

A. About what?

Q. Yes.

A. It might have been with regard to the "Mulas"—with regard to the question you have asked me——

Q. Who told you that the plantation "Mulas" had been divided?

A. Mrs. María first; that is a matter publicly known.

Q. Where did you first find it out, here in Humacao?

A. What?

Q. The division of "Las Mulas?"

A. The division of "Mulas?"—That was known everywhere. Everybody knew the division of the property had been
764 made.

Q. But I mean you?

A. I don't remember.

Q. You don't remember whether it was here in Humacao this morning?

A. No, sir.

Q. Do you know whether it was in the country?

A. No, sir.

Q. Do you know whether it was a year ago?

A. It is not a year ago; it is a short time ago, that is a few months ago that the cattle that these people had in this enclosure were removed from there; now a certain Mr. Toro has his cattle there.

Q. How did you find out that Faura had some property leased—some part of the plantation "Mulas" leased?

A. I said that I didn't know whether or not he has some of that now.

Q. But you said that he had some before?

A. He had at the time because I leased from him, but I don't know whether he has now.

Redirect examination:

Q. When you said that you were raising cattle in partnership with Mr. Fuertes, did you mean Mr. Fuertes personally or with his brother-in-law?

A. I did not remember at the time that the rights had been transferred over to the Succession of Rodiguez, who are represented
765 by Mr. Faustino Fuertes.

Witness excused.

HUMACAO, *July 11th*, 1905.

In accordance with the order appointing the present Examiner made on the 19th day of June of the present year, the defendants now offer, and ask to have opened, the deposition of Manuel Argueso, as a witness for the defendants taken before W. H. Thitchener as Commissioner of this Court in the City of New York at No. 30 Broad Street, and received by the Clerk of this Court by due course of mail on the twenty-ninth day of June, 1905, and asks to have the same attached to the testimony taken before the said Examiner, subject

to objection on the part of complainant, as stipulated in the order aforesaid.

No objection is made by complainant's counsel to the opening of the deposition of Manuel Argueso as aforesaid, and the same is accordingly opened by me in the presence of counsel for both plaintiff and defendants.

766 In the United States District Court for Porto Rico. In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Examination of witness Manuel Argueso, at No. 30 Broad Street in the Borough of Manhattan in the City and State of New York, before William H. Thitchener, Notary Public in and for the County and State of New York, on behalf of the defendants, pursuant to the commission issued out of said court, dated May 22nd, 1905.

MANUEL ARGUESO, a witness produced on behalf of the defendants being first duly sworn deposes and says in answer to the interrogatories annexed to said commission as follows:

In answer to the first interrogatory he says:

Manuel Argueso, thirty-eight years of age, commission merchant, residence, New York City.

To the second interrogatory he says:

My residence was in Humacao, Porto Rico, and I was engaged in the business of agriculture and commerce.

To the third interrogatory he says:

I know the complainant in this suit and have known her
767 for more than six years. During the month of January, 1901, she lived at Humacao, Porto Rico.

To the fourth interrogatory he says:

In the middle of January, 1901, I visited the house of the complainant in Humacao with several other persons. It was about the middle of January, 1901; it was early in the evening, as I remember, between seven and eight o'clock, and a certain compromise agreement was signed by the complainant during that visit.

In answer to the fifth interrogation he says:

When I visited the house of the complainant, as I have already said, about the middle of January, 1901, as I remember I was accompanied by the attorneys for the parties Mr. Rafael Lopez Landron, Mr. Jose Maria Cuadra and Mr. Paco Noya, the husband of Mrs. Petronila Josefa Rios y Gutman, who was a sister of the complainant; we remained there about twenty minutes. After the lady of the house, Mrs. Maria Rios, widow of Rubio, appeared, I was invited to read the document to be signed by the said lady, which I did, in order that all the parties present might hear it, and at her request I gave it to Mrs. Rubio to read it herself, which she did—

glancing over the document—after it having been read by me and her she signed it. All this occurred in the parlor of the complainant's house in the presence of the aforesaid persons, and in regard to what was said by the parties present, I only remember a question made by Mrs. Maria Rios, the complainant. She asked whether in the partition of land which had been made, she would be entitled to a small parcel of land called Culoprieto, which had been sold at auction for non-payment of taxes, and also another question
768 as to whether Mrs. Manuela de Gutman, her mother, should have the right to receive the profits of the properties adjudicated to her by the compromise agreement, and her lawyer stated to her that that was not the case. I also remember Mrs. Rios and Mr. Noya stating that they were satisfied that the family difficulties were settled. She also made some other remarks, which I do not now remember, and we retired. I do not remember any person being present during said visit other than those who went with me to the house, as I have stated.

In answer to the sixth interrogatory he says:

I could identify the document signed on that occasion. It was a private document typewritten at my office. The document was a compromise agreement respecting certain lands belonging to the estate of Jose Maria Rios, the father of the complainant, Maria Rios de Rubio and Petronila Rios and husband of Mrs. Manuela Gutman. It was signed already by Mrs. Petronila Rios and her husband Francisca Noya, by Mrs. Manuela de Gutman and her lawyer Mr. Rafael Lopez Landron, and if I remember well, also by lawyer Jose Maria Cuadra. The complainant Mrs. Maria Rios de Rubio had perfect and entire knowledge of its contents, because after the document was read to her, she examined it herself.

In answer to the seventh interrogatory he says:

The said document was signed in my presence by Mrs. Maria Rios with ink and pen, which were furnished from the house and
769 furnished by her brother-in-law Mr. Noya.

In answer to the eighth interrogatory he says:

Mrs. Maria Rios, widow of Rubio, in signing the said document did not make the slightest protest or objection; but she signed with pleasure because I remember that she stated her satisfaction in saying that the old family troubles on account of conflicting interests were settled forever. She never thereafter made any statement to me with reference to her signature to said document having been obtained by any deceit or misrepresentation, or under any mistake on her part.

In answer to the ninth interrogatory he says:

The said compromise agreement was first drawn in the form of a memorandum by lawyers Cuadra and Rafael Lopez Landron and in my presence. Later it was corrected by those attorneys, recopied in a typewriter at my office in Humacao.

In the discussion of the final condition of the documents, Mr. Paco Noya, Mr. Cuadra, as counsel for Mrs. Rios and Mr. Landron, counsel for Mrs. Gutman, took part, I being present during the discussion.

In addition to the above Mr. Jesus Almiroty and Julbe who were

my typewriters at that time, had full knowledge of the contents of the document before any signatures were obtained thereto.

In answer to the tenth interrogatory he says:

I was present during several of the discussions of the attorneys Cuadra and Lopez Landron that took place at my office during the course of the preparation of the document in question and the
770 complainant was represented by Mr. Cuadra as her counsel, in determining the terms and conditions of the contract. He went out several times stating that he was going out to consult with his client as to the contract.

In answer to the eleventh interrogatory he says:

The document was signed by Mr. Almiroty and myself as witnesses. I was present at the time the complainant signed the document but I do not remember that Mr. Almiroty was there. I have subsequently seen his signature to the document as a witness,—I think the following day.

In answer to the twelfth interrogatory he says:

I cannot state any further matter or thing which might be of benefit or advantage to the parties at issue in this case or either of them, or material to the subject of my examination or the matters in question in this case, other than as stated in my answers to the previous interrogatories, except that during the course of the matter, when we went to Mrs. Gutman's to take her signature to the contract, it was stated to Mrs. Gutman in my presence, by the attorneys both for Mrs. Rios and Mrs. Gutman that the compromise was an advantageous one for all parties.

M. ARGUESO.

771 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, William H. Thitchener, Notary Public in and for the County of New York, and Commissioner of the United States District Court for Porto Rico, named in the commission hereto annexed, do hereby certify that on the twenty-first day of June, One thousand nine hundred and five, in the Borough of Manhattan, City and County of New York, I was attended by the witness Manuel Argueso, and the said witness, who was of sound mind and lawful age, having been by me first carefully examined and cautioned and sworn to testify the truth, the whole truth and nothing but the truth in the within entitled cause, gave his testimony, which was taken down by a stenographer appointed by me for that purpose, in the presence of the witness and from his statements, and the said stenographic notes were afterwards reduced to writing by a typewriter, and subscribed by the witness in my presence.

And I do further certify that I am not of counsel for either of the parties in the said commission named, nor in any way interested in the event of the cause named therein.

In testimony whereof, I have hereunto set my hand and seal this 22nd day of June, A. D. 1905.

W. H. THITCHENER,
Commissioner, Notary Public in and for the County and State of New York, U. S. A.

772 TOMAS CARRERAS, witness called on behalf of defendants, having been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. Your full name is Tomás Carreras?
A. Y Más—Tomas Carreras y Más.
Q. Your residence?
A. Humacao.
Q. How long have you lived there?
A. Since 1867.
Q. Did you reside here in the month of January, 1901?
A. Yes, sir.
Q. And where were you at that time? Were you in Humacao at that date?
A. Yes.
773 Q. Do you know Lawyer Rafael Lopez Landrón?
A. A great deal.
Q. Did you in 1901 have any business relation with him?
A. Yes.
Q. Of what character?
A. In all the legal matters which he had in Humacao I acted for him as his agent.
Q. Do you remember whether Mr. Landrón came to Humacao at any time during that month of January?
A. He was in the habit of coming very frequently.
Q. Well, was he here in connection with the settlement of the "testamentaría" of José María Rios y Berrios?
A. Yes, sir.
Q. Do you remember about what time that was?
A. I don't remember the month and the day, but I remember the year; it was 1901.
Q. Did you do anything for him in connection with that settlement?
A. Yes, I performed several services.
Q. With regard to the drawing of any paper, did you do anything?
A. Yes.
Q. What was that?
A. I remember having written the writing requesting institution of the dominion proceedings, and I think that I also wrote the basis for a settlement.
Q. Will you please look carefully at this document (handing witness "Exhibit 3 for Defendants") and see if you recognize it?
774 A. (Examining the document referred to.) It is in my handwriting.
Q. State, as near as you can remember, the circumstances under which you drew that instrument?
A. The only thing that I remember is that while attorney Lopez Landron was here and Mr. José María Cuadra, also an attorney in the case, these bases for a transaction were written out, a rough copy

of which was dictated to me by attorney Rafael Lopez Landrón, requesting me to write it out in a clean copy, and that once I had it thus made to turn it over to attorney Cuadra.

Q. Is the document now shown to you the clean copy that you wrote out?

A. Yes.

Q. Do you remember what time of the day or night those instructions were given you?

A. I know that the rough draft of it was made at night time; that document was dated on the seventeenth, the following day on which the bases were written out, and it was on that day that I delivered it to attorney Cuadra.

Q. Then the same date that it bears?

A. Yes.

Q. Do you know where Mr. Landron was that following day?

A. I think he left for San Juan very early.

Q. After you delivered it to Mr. Cuadra did you see it any more?

A. No, sir.

Q. State whether or not lawyer Cuadra was present when lawyer Landrón dictated the rough draft of that instrument?

775 A. He was present.

Cross-examination by Mr. HERNANDEZ:

Q. Mr. Carreras, what is your profession?

A. I was procurator for the court of this district from the year 1867 until the abolition of the office and afterwards I remained as agent for attorneys.

Q. What do you mean by "agent?" Please explain that word to us?

A. An "agent" is the party engaged in conducting the preliminary business of lawyers and performs other services in connection with the lawyers' business; the agent may be said to be the substitute of the former procurator so far as his services are concerned.

Q. I do not understand yet what the services of an agent were; please explain that a little more fully?

A. The agent takes part in serving the summons-, notifying the parties of the orders made by the court, signing and filing pleadings presented by the attorneys, reporting to the attorneys everything that happened in connection with the case, keeping him constantly posted concerning the actions taken in the matter and everything that happened in connection therewith. Nothing more.

Q. And when the case arrived at the stage of offering evidence then the agents would look for the witnesses and the proof that might be adduced. Was that not his business also, Mr. Carreras?

776 A. The summons- to be served upon the witnesses were drawn up by the agent of the attorneys and turned over by him to the clerk for service to be served.

Q. In other words you are what is called a "judicial agent?"

A. Yes.

Q. Up to the present time that is your profession?

A. Yes.

Q. And at the time referred to in January, 1901, were you acting as "judicial agent" for Mr. Landron?

A. Yes.

Q. In other words, you were reporting to him everything in connection with the case of Doña Manuela and looking for witnesses and evidence on her behalf?

A. Yes.

Q. Were you also acting as judicial agent for Cuadra?

A. No, sir.

Q. You only acted as judicial agent for Lopez Landron, then, is that correct?

A. Yes. Mr. Cuadra had other agents here.

Q. You had nothing to do with the matters of Cuadra, then?

A. No, sir.

Q. You also acted on behalf of Doña Manuela, did you not?

A. Yes, ever since I was a procurator.

Q. For how many years past?

A. Most ever since I came to Humacao. I was also procurator of Mrs. María Rios' father.

Q. You also acted as representative or judicial agent for Doña Petronila Rios, did you not?

A. No, sir.

Q. Didn't you act as her procurator?

777 A. No, sir.

Q. Didn't you act as procurator of Doña Manuela?

A. Yes, sir.

Q. Didn't you have a power of attorney from Doña Manuela to act in her behalf?

A. Yes, sir.

Q. Didn't you have a power of attorney from Doña Petronila also?

A. No, sir.

Q. Didn't you act as judicial agent and procurator of Doña Manuela and Doña Petronila in several cases that they had against Don Ricardo Rubio, husband of Doña María?

A. During the time I was procurator I represented Doña Manuela; after the abolition of the office of procurator I acted as agent for the attorneys.

Q. In other words, you were looking out for her interests and protecting her in that suit against Don Ricardo Rubio, were you not?

A. Yes, sir.

Q. You have testified that this "Exhibit 3 for Defendants" which has been shown to you and which you have read is the basis of settlement; I think you are mistaken; I give it to you again (handing same document to witness) and ask you to read it over and make the corrections that you may desire in your former testimony?

778 A. The document says——

Q. I do not ask you to read it and state what it contains; what I want you to do is to read it to yourself and let us know whether it is the basis of the settlement or something else?

A. I think that it refers to the transaction, it seems to me that it does.

Q. But that is not the question; I know very well that it refers to "a" transaction; what I want to know from you is whether it is the basis of settlement or something else?

A. The lawyer would know that; I just simply wrote what was dictated to me.

Q. And you cannot find out from a reading of the document what it is, can you?

A. In my opinion it refers to a transaction as agreed upon between the parties; I do not know what was agreed upon by the parties because I was not present, nor do I know anything of my own knowledge as regards the transaction of the agreement because I have not written anything else.

Q. Do you find in that document any basis for any transaction?

A. No, no basis.

Q. Then it is not the basis of a transaction?

A. It says that they have arrived at an agreement "by virtue of the fact that we have arrived at a satisfactory settlement of all our difficulties"—therefore there is a transaction; in my opinion there was a transaction but I do not know the terms in which that transaction was written out.

Q. After all these statements are you sure whether it is
779 the basis of the transaction or not?

A. It refers to a transaction agreed upon.

Q. Mr. Carreras, you have had a great deal of experience in judicial matters and the taking of testimony, and you certainly ought to be able to answer a question directly "yes" or "no" without evading the question, and all I will ask you now is to answer "yes" or "no" whether that document is the basis of the transaction or is it not?

A. The basis is not set forth here—is not expressed; the document does, in fact, refer to a transaction.

Q. That is all I want to know,—that it is not the transaction?

A. That they have arrived at a satisfactory agreement or settlement.

Q. You have testified that you have not acted as judicial agent for lawyer Cuadra. I want you to explain to me why is it that this document is drawn by you, as you have said, while acting as judicial agent for Lopez Landrón, and yet it is headed "On behalf of Lawyer José Maria Cuadra, attorney for Doña Maria Rios and Doña Petronila Rios?"

780 A. As agent that I was of attorney Lopez Landron he asked me to write out the rough draft of this instrument and to write it out in a clean sheet.

Q. Did attorney Cuadra also dictate that to you?

A. He was present.

Q. From whom did you receive the instructions?

A. From Mr. Rafael Lopez Landrón.

Q. And what was Cuadra doing?

A. Cuadra was there present as attorney or as counsel for Mrs. María and Mrs. Petronila.

Q. Did he make any statements?

A. They were arguing with each other once in awhile.

Q. Did you hear what that argument was?

A. Yes, sir.

Q. What did Cuadra say?

A. I cannot just now tell what they talked about because it is such a long time, but I do know that they discussed certain matters and had certain conversations and that they agreed as to the drawing up of the document.

Q. What did Lopez Landrón say?

A. With regard to what?

Q. As to anything?

A. I don't remember anything absolutely because it is now a long time and I have forgotten it all.

Q. So you have forgotten entirely the statements made by Cuadra and the statements made by Lopez Landrón, but yet you remember perfectly clearly that Cuadra and Landrón agreed upon the document?

781 A. Yes, conformed with each others views, and the proof of it is that they both signed the document.

Q. Do you remember the date that you wrote that document?

A. Yes.

Q. What date?

A. On the same date it is dated—January seventeenth; on that date I turned it over for their signatures.

Q. Are you sure that this document was not written on the sixteenth?

A. That is something else that I cannot state for a fact. I know that the rough draft was made on the sixteenth; the rough draft was made first, and after the rough draft was made I wrote out the clean sheets.

Q. You mean to say that you were working on this document on the sixteenth?

A. On the sixteenth of the evening. And if I am not mistaken I think it was at the Priest's house.

Q. At what time, more or less?

A. It might have been at eight or nine o'clock in the evening.

Q. I wish you would refresh your recollection and state to the court whether in the best of your memory this document was not finished and written by you that night of the sixteenth although it bears date of the sevent-h?

A. No, sir. On the morning of the seventeenth it was that I delivered it for signature and it was signed, because it was impossible for the document to be written on one day and be dated on the following day.

782 Q. But you are not absolutely certain whether it was written on the seventeenth or the sixteenth, as you have just testified?

A. I cannot give you a positive answer because my memory fails me.

Q. You testified that you had a power of attorney from Doña Manuela Gutman, but denied that you had a power of attorney from Doña Petronila. I show you a document (handing a paper to witness) and ask you to read it and to refresh your memory and explain to me the contradiction that exists between your testimony in this regard and this document that I now hand you?

A. (After examination of document) I have been attorney in fact of Doña Manuela as her procurator——

Q. Well, don't give us any explanation until you familiarize yourself with the document?

A. (Examining document carefully.) This power of attorney was executed in the year 1896 by Doña Manuela Gutman, wife of Mr. José María Rios, in her own right and in representation of her legitimate daughter Doña Petronila, at that time under age.

Q. You know perfectly well that Doña Manuela, as the mother of Doña Petronila, a minor, was her natural guardian and that she had executed to you this power of attorney——?

A. To take part in the testamentary proceedings.

Q. So that you had a power of attorney from Doña Maria and from Doña Petronila?

A. Yes, sir.

Q. I mean from Doña Manuela and Doña Petronila?

783 A. Yes, sir; of Doña Manuela on her own behalf and as agent or representative of her two daughters.

Witness excused.

784 Don Antonio Aldrey y Montolio, witness called on behalf of the defendants, having been duly sworn, testified as follows:

Direct examination by Mr. Pettingill:

Q. What is your name?
A. Antonio Aldrey y Montolio.
Q. Where do you live?
A. In Humacao.
Q. How long have you lived there?
A. Since the year 1898.
Q. What is your profession?
A. Notary Public.
Q. How long have you been a notary?
A. Since 1894.
Q. Have you had your office in Humacao during all that time?
A. No, sir.
Q. When did you become a notary in Humacao? When did you begin in Humacao?
A. In 1898.
Q. Were you a notary of Humacao in 1901?
A. Yes, sir.

Q. Do you remember wheth-r on the sixteenth of January, 1901 you were in Humacao or absent?
A. I was absent from Humacao.
Q. Where?
A. At the Island of Vieques.
Q. And when did you return?
A. On the following day, on the sevententh.
785 Q. About that time were you requested to make any document in relation to the settlement of the -state of José María Rios y Berrios?
A. I was spoken to on the eighteenth to convert into a public instrument a private agreement that had been entered into.
Q. Private agreement of settlement,—"transactión"?
A. Yes, sir, a private document of transaction.
Q. At that time was there any other notary in Humacao?
A. No, sir.
Q. Upon receiving that request to convert the private document into a public one what did you do?
A. I proceeded to execute the instrument.
Q. Who made that request of you?
A. The private document was presented to me by attorney Cuadra, and he stated to me that he represented at that moment all the interested parties.
Q. On what day, if you remember, was the public instrument written by you?
A. The same date that I was given the private document.
Q. What happened after that?
A. After that I believe I can state categorically that it was finished on the same day.
786 A. (Continuing:) I don't remember if it was to be signed the same day in the afternoon or the following day in the morning.
Q. Was it signed?
A. No, sir.
Q. Why not?
—. ——.
Q. Did any of the parties come to your office?
A. When?—Because many people come to my house.
Q. I mean for the purpose of signing?
A. Mrs. María was not; with regard to Doña Manuela and Doña Petronila I cannot state categorically whether or not they were in my house; I think that they were but I cannot reply to the question in a categorical, positive way.
Q. Are you giving your best recollection?
A. I believe I have taken an oath here.
Q. You say you cannot state positively. I now ask if, according to your best recollection, that is a fact?
787 A. Yes. To the best of my recollection not less than three thousand persons come into my house during the year; I cannot state positively that these ladies called there inasmuch as

four and one-half years have elapsed since that time, and I cannot remember positively.

Q. Do you remember whether any other of the interested parties, lawyers or other parties, were there?

A. I remember attorney José María Cuadra, Francisco Noya, and with regard to Doña Manuela and Doña Petronila I have already stated that I cannot give you a positive answer as to whether they were or not.

Q. Now, while Cuadra and Noya were there, did they go out and return or not?

A. When they came I said to them that the document was already written out and that it was ready to be signed, and that therefore they should notify all the parties to get together, and shortly after lawyer Cuadra said to me that Mrs. María did not want to sign the instrument.

A. Shortly afterwards Cuadra came back and said to me that Mrs María did not want to sign.

788 Q. Who went with Cuadra at that time, if any one?

A. Francisco Noya.

Q. What became of the instrument that you then drew or had drawn?

A. I have it in my possession.

Q. Have you it here?

A. Yes, sir.

Q. It was never made a part of your protocol because it was not signed?

A. No, sir.

Q. In whose handwriting is it?

A. Mine.

Q. And this is the identical instrument that you drew on the eighteenth of January, 1901?

A. Yes, sir.

Counsel for defendants here offers in evidence the document just above referred to, and the same is herewith filed and marked "Exhibit 16 for defendants." Said document is not signed nor is it dated.

789 EXHIBIT "16" FOR DEFENDANT.

Translation.

Number.

Compromise of a Lawsuit.

In the city of Humacao, capital of the Notarial District, on —— —— —— before me, Antonio de Aldrey y Montolío a resident and a Notary of said city and a member of the Notarial College of the island of Porto Rico, and before the witnesses hereinafter to be stated:

Come.

1st. Doña Manuela Gutman y Lara, widow of Bustelo, a property owner, of age and resident of this city.

2nd. Doña María Guadalupe Rios y Gutman, widow of Rubio, a property owner, of age, and also a resident of this city, and

3rd. Doña Petronila Patricia Rios y Gutman, accompanied by her lawful husband Don Francisco Noya y Frias, both property owners, of age, and both residents of this city.

I, the Notary, certify to said parties being personally known to me, as well as to their profession, and to their being residents of this city, which said parties assure me that they are in the full enjoyment of their civil rights, nothing to the contrary being known to me; and the said parties having, in my judgment, the necessary legal status to execute this deed of compromise of litigation, and with the marital permission and consent obtained by Doña Petronila Patricia Rios from her husband Don Francisco Noya, which permission was asked, granted and accepted in my presence, the said parties made the following statements of facts, to wit:

1st. That in the District Court of this District there is pending a suit about mutual claims between the parties aforesaid, in the *ex parte* testamentary proceedings of the will of Don José Rios y Berrios, and the said parties having come to an agreement to put an end to said litigation they have compromised or settled same under the
790 terms and conditions hereinafter set forth.

And in order that the agreement between the parties aforesaid may, at all times, be of record they execute this public deed in which are stipulated the conditions agreed upon, in the following clauses, to wit:

First. Dona Manuela Gutman y Lara, Doña Maria Guadalupe Rios y Gutman and Doña Petronila Patricia Rios y Gutman, the latter with the consent and permission of her husband, Don Francisco Noya y Rios, agree to discontinue and withdraw the suits of mutual claims, aforesaid, in the *ex parte* testamentary proceedings of the will of Don José Rios y Berrios as well as from all the incidents and appeals in connection with said suits.

Second. Doña Manuela Gutman, in her own right will immediately deliver to her children by her first marriage, called Doña María Guadalupe and Doña Petronila Patricia Rios y Gutman, all the lands and appurtenances which now compose the plantation called "San José de las Mulas," situated in this district, with the exception of a piece of land of forty cuerdas belonging to the heirs of her second husband, Señor Bustelo, which land was acquired by said heirs at public auction.

Third. That said Señora Gutman will also deliver immediately to her said children by her first marriage, the lands which compose the farm (estancia) "Culoprieto" of the Naguabo district.

Fourth. Doña Manuela Gutman will retain for herself as sole and exclusive owner, and in full ownership, all the lands which are estimated as remaining in the district of Naguabo, nine hundred cuerdas, more or less, left by her first husband, Don José Rios y Berrios, at his death.

Fifth. On the understanding that by this means the condominia or joint ownership heretofore existing in the inherited estate left at the time of his death by the late Don Jose Rios y Berrios, from whom said estate was derived, is dissolved in a definite manner, it is understood and agreed by this compromise or settlement that each of the parties thereto becomes exclusive owner of the share awarded to said party, as aforesaid, without reservation or limitation of any kind whatsoever.

Sixth. It is agreed that Don Jose Maria Cuadra and Don
791 Rafael Lopez Landron, respectively, counsel for Doña Maria Guadalupe and Doña Petronila Patricia Rios, and Doña Manuela Gutman, are commissioned to perfect this compromise or settlement in such a manner that it may be carried out without any delay, in order that each of the parties aforesaid may enter into full possession of what is herein awarded to each of the parties by this compromise or settlement, as aforesaid, and that each of the parties aforesaid may be provided with her title duly registered at the office of the Registry of property, free of all charges and encumbrances.

Seventh. The legal expenses of this compromise or settlement, to wit, deeds, copies of same, registration fees, costs of proceedings of ratification of the discontinuance or withdrawals, independent of the fees of the attorneys, to be for account solely of Doña Manuela Gutman.

Eig-th. Although by this compromise or settlement, which is considered by Mesdames Doña Maria and Doña Petronila highly advantageous, the said parties in interest are satisfied with the proper manner in which their mother, Doña Manuela, has performed the very arduous duties of preserving such a large estate for many years through the serious difficulties that have supervened, the said Doña Manuela reserves to herself the right to submit to her daughters public testimony of the honest manner in which she has acted up to the present time therein, in a full explanatory report, duly vouched for, of the very difficult vicissitudes the estate has undergone during the long period of her management.

Ninth. As Doña Manuela is better informed than any of the other parties aforesaid, regarding the claims which may be due, or pending, or which can be established in favor of the estate left by Don José Rios y Berrios at his death, she is hereby commissioned to continue, or so establish same, as soon as possible, it being expressly understood that the favorable results of said claims shall be divided in three equal shares for the benefit and use of Señora Gutman and her two daughters, aforesaid, by her first marriage, the second and third parties to this deed as aforesaid.

792 Tenth. It must here be stated that these conditions were approved by a private agreement signed in this city on the sixteenth of January of this year which agreement the parties aforesaid bound themselves to ratify by public deed.

Eleventh. I, the Notary, pointed out to the parties aforesaid that should their counsel not have filed petitions of discontinuance or withdrawal of the suits a copy of this deed should be filed with the

District Court in order that same may, at all times, have its legal effects.

Such is the document which the parties aforesaid have executed and to the fulfillment of which they bind themselves in the most solemn manner in accordance with law.

The parties aforesaid accept this deed in all its parts the same being in accordance with what has been agreed upon between them, and by mutual consent designate this city for all acts and proceedings which might arise in the fulfillment of this contract.

Thus said, executed and signed, in the presence of, and also signed by, the witnesses Don —— and Don —— residents of this city, of age, and without any legal disqualifiaction to act as such witnesses, and whom I certify to be personally known to me, after this deed was read by each party separately in accordance with the right given them to do so by law, of which I informed them, to all of which I certify.

792½ Q. As this document is not a part of your protocol there is no legal obstacle to your submitting it to the court as an exhibit in evidence?

A. As it is not signed or dated.

Counsel for complainants objects to the introduction of the foregoing document because it is totally immaterial, impertinent and irrelevant and not binding upon anybody, without any signatures and without date, and is not a document connected with the issues of this case.

Sustained. Exception by Defendants.

793 Cross-examination by Mr. HERNANDEZ:

Q. You are reputed here in this community as an honorable citizen and as a true gentleman, and do you want to give the impression to this court that Doña Manuela and Doña Petronila were in your notarial office on the morning of the eighteenth of January, 1901?

A. I have answered categorically that if this instrument, which is not signed, had been so signed, then I would be in a position to say emphatically that all the parties signing the document had been there, because the law compels me to have all the parties present; but inasmuch as the document was not signed, I have said before, and I say again, that categorically I cannot state whether or not they were; I believe that they were there but I would not state it as a fact.

Q. Mr. Aldrey, you are an intelligent witness and you know perfectly well that your answer is not an answer to my question; I ask you not to evade my question and to answer me "yes" or "no" whether, as an honorable citizen and a true gentleman you want this court to understand, or you want to give the impression that Doña Manuela and Doña Petronila were in your office? Let me know "yes" or "no" whether or not you want the court to be under the impression that they were at your office?

A. I cannot reply categorically "yes" or "no;" I have to make a history of what happened in this case: Mrs. Petronila has been in my house hundreds of times and I cannot say whether she was there one day or another. If that document had been signed I would then state positively that they were present at that time.

794 Q. But I again am going to insist upon that question: Do you want to give the impression to the court that Doña Manuela and Doña Petronila were in your office?

Q. (Last question above repeated to the witness.)

A. I have no interest whatsoever in this case, nor do I wish to leave any kind of impressions; Mr. José María Cuadra and Mr. Francisco Noya were in my office; I said to them that the document was ready to be signed and asked them to notify the parties; shortly afterwards José María Cuadra came back to the office and said to me that Doña María did not desire to sign. I have not seen this lady in my house nor have I talked about this matter with her until something like a month or a month and a half ago; at the time that Mr. José María Cuadra and Francisco Noya went there none of the other parties went there; but since I told them to notify the parties I believe that they went there—I would not state it positively—I cannot make a positive statement; and I base that opinion on the ground that figuring the number of persons calling at my office per year at three thousand persons the total number from that time on to the present over thirteen thousand people have called at my office since that time.

Q. Then it is only an impression of yours that Doña Manuela and Doña Petronila were there?

A. I cannot find the true scope of the word "impression," but it seems to me that they were.

795 Q. Could you swear that they were there positively?

A. But I have been stating that I cannot say so positively; if the document had been signed I would make a positive statement to that effect. In addition to my office business I have lots of other private matters in which I am engaged. I cannot state positively that they were there; all I can say is that I believe they were there; I could not say so positively that they were there.

Q. You don't know of your own knowledge that Doña María refused to sign; your knowledge of her refusal is from what Cuadra told you, is it not?

A. I know it only by hearsay; it was said to me by Mr. José María Cuadra.

Q. Did Cuadra state to you the reasons?

A. No, sir. And if he did so, I don't remember; he said to me that she did not want to sign.

Q. That is all he said to you?

A. If he said anything else I don't remember; I know that he said to me that she did not want to sign.

Q. Why didn't the other parties sign the document?

A. Because the law does not permit it. If I am allowed to clear up this point I will do so.

Q. Yes.

A. It would not be possible for some of the parties to sign the instrument and others not, because I am told by the law that in all cases where an instrument is made before a notary all has to be done at one time, the parties to the instrument and the witnesses being present at the act; and of course I could not permit some to
796 sign and that later on the others come to sign or that other signatures be appended. That does not mean, however, that there are not other instruments where some of the parties have signed and one of the parties refused to at the last moment; but that is another question altogether different.

Q. Is it not a fact that about a month ago you called to the house of Doña María for the purpose of bringing to her another document for signature and in conversation with her you positively stated to her that neither Doña Manuela nor Doña Petronila had called at your notarial office on January eighteenth, 1901, for the purpose of signing this document?

A. I have been in her house really a month or a month and a half ago to present to her an instrument and we talked about this matter and I said to her right there that that was the first time that we had talked about the matter concerning her family, but what is stated positively by the attorney in the last part of his question that I stated to her that neither Doña Manuela nor Doña Petronila had been at my office, I do not remember having spoken with regard to that.

Q. Is it not a fact that in conversation with her at that time in her house you stated to her that the other parties to this suit were claiming that Doña Petronila and Doña Manuela had been in your office to sign this document and that you stated to her that you knew positively that they had not been in the office and if called to testify you would say so?

A. I have said already that I do not remember having spoken of that matter, and I would not state positively that these ladies had been at my office.

797 Q. Is it not a fact that about five or six months ago you had a conversation with Don Juan Vias Ochoteco in which you stated to him that Mr. Fuertes and Mr. Cuadra had approached you for the purpose of finding out whether you were going to testify that Doña Petronila and Doña Manuela had been in your office to sign this document and you stated to Mr. Vias Ochoteco that you would not testify that because you knew positively that they had not been in your office?

A. I do not state that Doña Manuela and Doña Petronila have been at my house, and with regard to any conversation with Mr. Vias Ochoteco, perhaps such conversation existed, but I do not remember that we said anything with regard to this; this is a matter that does not concern or interest me one way or the other.

—. ——.

A. The same opinion that I have formed of any other person until he is shown not to be honest; in other words, every person in my opinion is honest until he has shown himself to be different.

Q. Is it not a fact that about five or six months ago in a conversa-

tion that you had with Mr. Jesus María Porrata in the office of the Registrar of Property you stated to him that Doña Manuela and Doña Petronila had not been in your office to sign this document?

A. No, sir. I am going to answer that question amplifying it: We talked about the Rios case, and we talked there that there existed some little unfriendliness between Doña María and Doña Petronila, and how that contract was to be signed if each one of the parties was to sign at her own house, and in reply to that I said that under the law I could not go to each one's house to get her signature; that all of them would have to get together at my office or at some house.

798

Q. What amount was offered to you in payment of your work for drawing up that deed?

A. With regard to that document I was asked to fix a price under the basis of my having to make all the instruments connected therewith, and I was told that inasmuch as they were all important ones I would have to cut down the schedule rates, but we did not arrive at any particular price, and I am sorry to say that that document has not been paid to me by any of the parties yet.

Q. Was a definite amount offered to you by anybody for the drawing of that document?

A. No, sir. We agreed to leave it all until all the documents were finished.

Q. Is it not a fact that you were offered three hundred dollars for the drawing of that document, by Victor Burset?

A. No, sir. The truth of the matter is that upon observing that month after month elapsed and that I was not paid for my work I sent a bill for three hundred dollars because I was told that he represented Doña Manuela, and Mr. Victor Burset replied to me verbally, not in writing, that Doña Manuela could not pay because she did not have money to pay with and couldn't pay.

799

Q. What time did you arrive from Vieques?

A. When?

Q. On the seventeenth of January, 1901?

A. At dusk, more or less.

Q. At the time of your arrival at the Playa didn't you receive a letter from your brother requesting you to come to town, that there was an important document to be drawn up?

A. When I was coming from Vieques?

Q. Yes.

A. That is known by everybody—that my brother wrote to me to come; that the whole town knows it.

Q. Did he mention the document to be drawn?

A. Yes, sir, the matters concerning Doña Manuela Gutman's case.

Redirect examination:

Q. How did you fix the amount of three hundred dollars as the amount you sent your bill for?

800

A. Figuring the amount of property in litigation and over one hundred thousand dollars which I figured it out; one-

half per cent. to which I am entitled for every document involving a property the three hundred dollars that I charged was much less than the one-half per cent. rate to which I am entitled by law.

Q. Then it was by virtue of no understanding with anybody but based upon the schedule, with the reduction stated?

A. We didn't come to any agreement as a price for the document to be drawn, since when Mr. José María Cuadra spoke to me that in addition to this instrument I would have to draw some deeds of sale and I do not remember what other documents, that in sending in my bill he would request me to make a reduction from the schedule rates; and if my memory does not fail me he said to me that Doña Manuela was the one to pay for all the work; and after month after another passed without my collecting anything—and if I am not mistaken, before my leaving for Spain—I believe it was that I charged Mr. Victor Burset three hundred dollars for the document, and that amount which I put as the price of the document I had it in account because the transaction arrived at was made for some one hundred thousand dollars, or as I was told by themselves, or came to represent some one hundred thousand dollars; so that if I would collect one-half per cent. on account of its being a document involving value to a property then the price would be much greater than that.

Recross examination:

Q. Is that the way notaries' fees are fixed in Porto Rico?

A. We have a schedule.

801 Q. Do the notaries follow that schedule?

A. I have never collected more than the schedule fees.

Q. Do they collect less?

A. I do not know anything about the other notaries, but as to myself I would assert that I do collect under the schedule rates; especially in important matters I charge under the schedule rates.

Q. How many notaries are there in Humacao?

A. I do not think there are more than two to-day because the balance do not practice; there was a time when there were seven here.

Q. Is it not a fact that there is no jurisdictional limit to a notary public to-day in Porto Rico?

A. No, sir; we can practice in all the island.

Q. Is it not a fact that by reason of the competition among notaries the schedule is never taken into consideration as the basis for the collection of fees?

A. Let me tell you: A document which does not belong to a client of mine—(I am referring to myself alone, I cannot refer to anybody else)—a document that does not belong to a client of mine, as a general rule, I charge the tariff rates; when it belongs to a client of mine I am accustomed to charge less than the tariff rates, and when notwithstanding that I am asked to make a reduction I still reduce the fees; Mr. Juan Vias Ochoteco will bear witness to

802 this as the representative of Doña María.

Q. You have stated that you were told by the parties that

this transaction represented about one hundred thousand dollars; who told you that?

A. I don't remember, but I think that lawyer Cuadra said that to me; I don't remember who it was nor do I know the property in litigation; I think they are valuable but I don't know them.

Witness excused.

SAMUEL G. FRIEDMAN, witness called on behalf of the defendants, having first been duly sworn, testified as follows:

Direct examination by Mr. PETTINGILL:

Q. What is your name?
A. Samuel G. Friedman.
Q. What is your occupation?
A. Field-Manager for the San Cristobal Sugar Company.
Q. What was your business in the year 1901?
A. Revenue Agent and assessor of property.
Q. How long did you continue with the Treasury Department?
A. Four years.
Q. Beginning when?
A. In 1900.

803 Q. During 1902 and 1903 what part of the island had you within your district? What district were you in?

A. In the Humacao district.
Q. Did that include the Naguabo jurisdiction?
A. Yes, sir.
Q. Do you remember sometime in the latter part of 1902 being in Naguabo and going with Don Faustino Fuertes to inspect the property of three hundred and fifty cuerdas known as the "Cercado Ramirez," at the same time with other properties?
A. Yes, sir, but not expressly this property; I inspected some properties of his and of Garzot & Fuertes.
Q. Refreshing your recollection from these documents and tax receipts (handing documents to witness, marked "Exhibit 16 for Defendants") state what the assessed value at that time was of this three hundred and fifty acres belonging to Garzot & Fuertes?—The land itself, outside of the land belonging to Garzot & Fuertes?
A. I cannot remember exactly just now because there were other properties which I have assessed at the same time.
Q. But at the time of that examination preparatory to assessment do you recollect finding any occasion to raise the valuation of any property in the name of Messrs. Garzot & Fuertes?
A. Some property I did and some I did not; they are the owners of other different properties.

804 Q. As to this three hundred and fifty acres do you remember whether you raised that valuation at that time or not?

A. I don't think I did.
Q. But from that receipt (referring to exhibit heretofore handed to witness) can you not state the valuation that was on it, whether you raised it—can't you state at what it was returned?
A. Sometimes an assessor is assessing a piece of property at a

higher valuation and the owner of the property sometimes appeals to the revision board and sometimes they reduce it and sometimes not, and so I don't remember whether this was one of the cases or not.

Q. Then if, as a matter of fact, there was no appeal to the Board of Revision and no revision of the assessment by them was the assessment of that year what you regarded as a fair and just valuation of the property at that time?

A. Yes, sir.

Q. Were you at that time acquainted with the proper valuation to be placed upon property in this vicinity and in the jurisdiction of Naguabo, generally?

A. Yes, sir.

Q. How long did you work there or in this part of the island including that vicinity?

A. More than two years.

Q. More the two years?

805 A. Yes, sir.

Q. In this office in which your duties were the assessment of property?

A. As assessor and revenue agent.

Cross-examination by Mr. HERNANDEZ:

Q. Mr. Friedman, when did you take charge of your official position in the Treasury Department?

A. 1900.

Q. What month?

A. September.

Q. Prior to that time where did you live?

A. In Utuado and different parts of the island.

Q. When did you come to Porto Rico?

A. In 1898.

Q. From 1898 to September 1900 what was your occupation?

A. In 1898 I was with the military service, and 1899, and then I was with De Ford & Company for a year as paymaster and cashier on different construction work which they built for the War Department between Utuado and Ponce.

Q. During the years 1898, 1899 and 1900 have you been engaged in agriculture?

A. No. At that time I was with the military government, and also at the same time I was connected with the Police Department while under the jurisdiction of the military government.

Q. How long did you stay with the Treasury Department?

A. Four years.

806 Q. When did you quit?

A. I resigned my position in December last.

Q. 1904?

A. 1904.

Q. What is your present occupation?

A. Field-Manager for the San Cristobal Sugar Company.

Q. How long have you been the Field Manager of the San Cristobal Sugar Company?

A. Well, I was on leave, I had a month's leave from the Treasury Department on vacation last November.

Q. So you have been connected with it——

A. —One month while I was on vacation I accepted the position with this company and then afterwards I sent in my resignation.

Q. But how long have you been engaged practically in your new profession—your new position as Field Manager for this San Cristobal Company?

A. Since November.

Q. Up to the present time?

A. Up to the present time.

Q. You have lived in Naguabo?

A. Yes, sir.

Q. Where is that central located?

A. The central is going to be located shortly; we expect the machinery soon; it is to be erected on the road leading from Naguabo to the Playa.

Q. What is going to be the capacity of that central?

A. I cannot state officially, as the general manager of the central can give more information about it; I believe about ten thou-
807 sand tons or more; from ten thousand up, according to the cane which we are going to plant.

Q. Is the cane already being planted?

A. To a large extent, yes.

Q. Has the site already been purchased and the work commenced to fix it up?

A. Yes.

Q. Have the buildings all been erected?

A. Not yet, we are fixing the site for it.

Q. Is the machinery here in Porto Rico already?

A. Not the machinery but the railroad we are laying and the site which we purchased was planted with canes and we have taken out the canes in order to make the site bigger, to extend the site.

Q. How far is that central from the Cercado Ramirez?

A. I do not know Cercado Ramirez?

Q. You don't know Cercado Ramirez?

A. I don't know the name.

Mr. PETTINGILL: This three hundred and fifty acres?

A. About a kilometre; it is just opposite the central.

Q. Just one kilometer?

A. About; it is facing the central.

Q. Do you know this "Cercado Ramirez" composed of three hundred and fifty acres?

A. I don't know exactly the "Cercado Ramirez" unless it is only the name, I know there are different cercados; if you can tell me something else about it, who is the owner of it, and then let me tell you the place.

808 Q. The "Cercado Ramirez" was acquired by Garzot & Fuertes in 1902?——

A. —Yes——

Q. —And is composed of three hundred and fifty acres and is

located in the jurisdiction of Naguabo: Can you identify that property?

A. O, I remember now, yes; the present owners of it are Messrs. Garzot & Fuertes.

Q. Garzot & Fuertes?

A. Yes, sir; they have twenty odd acres of cane planted on it; yes, I know the property.

Q. Have you been over that property recently?

A. Twice and three times a week up to last April, from November to last April; I used to go twice and three times a week on that property; I used to cross it.

Q. Are Garzot & Fuertes one of the co-owners of the San Cristobal Sugar Company?

A. Both of them are, yes, sir; separately and also Mr. Fuertes has already planted I believe something more than one hundred acres of cane.

Q. How many?

A. I believe one hundred acres he planted, and Mr. Garzot planted something less than that, but there is a few acres—about fourteen acres, which we have ground on the old mill, last crop, of Garzot & Fuertes.

Q. Is the San Cristobal Sugar Company an undertaking of De Ford and Oyanguren?

A. I cannot tell.

809 Q. Who has appointed you Field Manager?

A. The present company, Mr. Mumford.

Q. Was Mr. Mumford connected with De Ford & Company?

A. A couple of years ago I believe; he may still be in connection with them, I don't know; I believe also last year he was in connection with the firm.

Q. Were you in Naguabo at the time that De Ford & Oyanguren went there for the purpose of establishing this central?

A. Do you refer to Mr. De Ford?

Q. Yes.

A. Well, I remember meeting Mr. Henry De Ford once in Humacao and Mr. Oyanguren a few years ago and he was making a trip seeing lands to erect a central; he looked at some properties in Fajardo and Naguabo and also around Yabucoa as well I believe.

Q. In what year was that?

A. I believe that was—I can't remember—it was in 1902 or 1903, I don't remember exactly.

Q. Is there any central being erected within the jurisdiction of Naguabo?

A. Not up to this time.

Q. Are you acquainted with the quality of the land of the "Cercado Ramirez"?

A. Yes, now that you have explained to me which is the "Cercado Ramirez," I am acquainted with them.

Q. Were you acquainted with the quality of the lands of the "Cercado Ramirez" in 1902?

A. At that time I knew less of the land than I do now; I knew them but not as good as I know the property now.

810 Q. Did you in 1902 make an examination of those lands, Mr. Friedman?

A. At that time the property did not belong to Messrs. Garzot & Fuertes but they had that property leased with other lands; there was quite a few acres that belonged to the widow of Gutman.

Q. Doña Manuela Gutman?

A. Yes, Doña Manuela Gutman.

Q. How many acres of the "Cercado Ramirez" are proper for the cultivation of cane, do you know?

A. I should think—it depends on how much you wish to expend money on; there is lots of the land you can plant cane but whether it will give results or not, that is the question; I think you could plant two hundred acres profitably.

Q. Are you acquainted with the value of cane lands in Naguabo?

A. Yes.—Now?

Q. Now.

A. I am.

Q. What is the value per acre of the lands of the "Cercado Ramirez" proper for the cultivation of cane?

A. In a bulk or separately?

Q. Per acre.

A. Do you mean in a bulk?—the entire property, or separate parts of those lands which could be cultivated and others which could not?—Separately?—Do you mean in a bulk?

Q. No. I want you to give us the price per acre of those two hundred acres which you say are proper for the cultivation of cane?

811 A. Well. Not over some two hundred acres—some of them are worth—some of them may be worth ninety to one hundred dollars, some are worth seventy and so on; there is always in two hundred acres lots that may be worth one hundred dollars, and there is fifty and sixty and forty-five, on account of the ditch.

Q. How many, if any, of those two hundred acres are worth one hundred dollars?

A. Well,—one hundred acres of it.

Q. And the other one hundred acres—what are they worth?

A. The one hundred should be worth on an average of fifty, fifty-five, up to sixty dollars.

Q. How does that land of the "Cercado Ramirez" compare with the good cane lands of Naguabo?

A. "Cercado Ramirez" in a few years now should be a pretty good land; now the "Cercado Ramirez" is in pasture, planted under "Malojilla" which is very wet, so the work of the first year is very expensive, and the first crop cannot give as good because the ground is too cool for cane, but the second is better and the third should be much better.

Q. Do you think that with proper methods and working the whole plantation could be planted with cane?

A. The entire 350 acres?

Q. The entire 350 acres?

A. It is a hard test on account of the river of Santiago, what they call it over there, which does a great deal of damage.

Q. Well, deducting the acres which are damaged by the river—with proper methods and management how many acres do
812 you think could be planted with cane, including not only the best——

A. ——but the second class?

Q. Second class, yes.

A. I haven't studied that up over there because it is very often deceiving; lands where you begin to work are often deceiving in places where they are flooded.

Q. Now, if you know, will you give us an estimate; if you do not know, say so?

A. I prefer not to give any estimate just now.

Q. You have stated that both Garzot & Fuertes have planted cane and grind cane in the central?

A. Not in the central—I beg pardon—in the old mill of the San Cristobal Sugar Company.

Q. In the old mill of the San Cristobal Sugar Company of which you are the Field-Manager?

A. Yes, sir.

Q. Will you give us an estimate of how many acres they have planted?

A. Fourteen acres.

Q. Both Mr. Fuertes and Mr. Garzot?

A. Yes, sir; they also grind the cane separately, too; but there is one piece of fourteen acres which I have known as of Garzot & Fuertes.

Q. And separately how many acres have they planted?

A. Mr. Fuertes ground twenty-six acres from canes which he has in the "Cercado Ramirez" and Mr. Garzot twelve acres which he had on his own property.

Q. Are you in business relations with them?

813 A. They are our "colonas" for the central—not exactly myself, but they are "colonas" for the company with which I am connected.

Q. You are a representative of the company on the field?

A. On the field only.

Q. Have business dealings with them?

A. Yes. I only represent the company as far as the field management is concerned, not more.

Q. Has the Humacao Sugar Company acquired great portions of land over there or just the site?

A. The Humacao Sugar Company?

Q. Yes.

A. The Humacao Sugar Company is not represented, as far as I know, in Naguabo.

Q. I mean the San Cristobal Sugar Company?

A. Yes, sir; they obtain the property of the San Cristobal Sugar Company, what they call "San Cristobal."

Q. How many acres has that property?

A. About two thousand; it is not the central, there are two different concerns; there is one company which is called the Central of San Cristobal and there is another company which is called the "San Cristobal Sugar Company."

Q. When was that San Cristobal Sugar Company—not the central—formed?

A. It was formed last fall.

Q. Do you know if by reason of the establishment of this central in Naguabo, by reason of the higher prices of sugar, the value of cane land has greatly increased in Naguabo as well as in Porto Rico within the past year?

A. Yes, sir.

814 Q. How much?

A. From thirty to forty per cent. higher than the property was worth before.

Q. Do you know when this increase began to take place?

A. Soon when the people of Naguabo found out that there was a central to be erected they already commenced to ask more for their property, and some small deals which have been made for less land, such, for instance, that land before you could hire to plant for six dollars per acre people are paying now as high as fourteen dollars per acre per year; lands which people asked before fifty to sixty dollars they ask now about as high as one hundred and twenty dollars; you may get it a little cheaper but that is what they ask for it.

Q. Did any of those dealings and increases take place in 1902?

A. Only recently.

Q. You testified that in 1902 you met De Ford and Oyanguren who were traveling through the district for the purpose of looking for a site for the establishment of a central in that district?

A. Not of the same central.

Q. What central?

A. There was talk of another central at that time but it was talked by a man in whom the people did not place much confidence and so the property was not raised on that account; nobody came over and bought any property.

Q. What central was that?

A. There was really no name to it; a man came over and was talking of putting up a central but the company was not

815 formed so you can't tell what company it would have been.

Q. Was that gentleman Mr. Bass?

A. I believe so.

Q. Did he spend money in that district?

A. I believe he did.

Q. Getting rights of way?

A. Yes.

Q. Did he purchase a plantation there?

A. Not as I know of.

Q. Do you know if he paid high prices for those rights of way?

A. Yes, in some cases; people wanted to make him a present—I know many of them wanted to make him a present of those lands provided he would put up a central but as long as he couldn't do

so—I know he paid a few hundred dollars for small strips of land for a railroad. That is all.

Q. Are you sure that his project and his expenditures of money in Naguabo did not increase those properties over there in the least?

A. It might at that moment, but soon after, it was cooled off; as well as I remember the tax-payers complained when I wanted to increase the assessment and for that reason they complained against it saying they didn't think a central ever could pay and there was nobody to buy lands and so forth, and for that reason I could not increase their assessment.

Q. Is it not a fact that since the duties on sugar from Porto Rico into the United States were suppressed the sugar industry has been developing and progressing in the island of Porto Rico?

816 A. Yes, recently, to a great extent.

Q. Is it not a fact that from 1900 up to the present time big capital has been invested in Porto Rico in the sugar industry, and that lands proper for the planting of cane have gradually increased in value?

A. In some districts, but, unfortunately, not in this one here.

Q. Is it not a fact that there are cane lands in this district as good as any that can be found in Porto Rico?

A. There are a certain part of very good lands in this district, yes, sir.

Q. Is it not a fact that all this district of Naguabo and Humacao and Fajardo is mostly a sugar district?

A. It was known as the cattle-raising district up to date because cattle was mostly raised; there were some good sugar lands, there were a few sugar mills, but people could not afford to plant cane if they had cattle of their own, and if not they hired them to others. This was known as the cattle-raising district.

Q. Was cattle a very prosperous industry at that time?

A. I am not much acquainted with the cattle business; one year I remember it was very good, I learned it from talk from the people.

Q. What year was that?

A. You may recollect, it was the time that Cuba gave so much time to enter cattle from other countries free into Cuba, and since that time there was duty on it and cattle business went down.

Q. Most of the cattle business of Porto Rico was exported

817 to Cuba, was it not?

A. Yes, sir.

Q. That was about two or three years ago?

A. Cuba and part of the French Islands up to the date of the eruption of Mt. Pelée, they exported a great deal of cattle right from this district to that place.

Q. That was about 1901?

A. 1901—1902.

Q. The cattle industry was very prosperous at that time?

A. At that time it was prosperous, yes, sir.

Q. It was really one of the best business enterprises in Porto Rico?

A. I can't say if it was one of the best or not, but there were some people I remember it was said made some money out of the business.

Redirect examination:

Q. Now that the exact location of the "Cercado Ramirez" under that name has been called to your mind do you remember whether or not that was one of the properties visited by you with Mr. Fuertes at the time you were examining for purposes of assessment?
A. Yes. I didn't make a special——
Q. It was one of those that you went through?
A. Yes, sir.

Witness excused.

818 DON FAUSTINO FUERTES, re-called, having been duly sworn, testifies as follows:

By Mr. PETTINGILL:

Q. Do you remember the time when Mr. Friedman, the last witness, came and examined your properties?
A. The first time he went to my place for the purpose of appraising for taxes was in 1902, but the last time was in 1903—in the month of March or April of 1903.
Q. At that time did he make any increase in the value of the "Cercado Ramirez" as returned by you in your "planilla"?
A. No, sir; in what he made a raise was in my own private "planilla" of my own private property, but not in the statements for the purposes of taxation of the property of Garzot & Fuertes.
Q. We are confining this to the "Cercado Ramirez"?
A. He did not make any raise as to that property.

819 By Mr. HERNANDEZ:

Q. What is the present valuation of the "Cercado Ramirez" as placed upon it by the Treasury Department?
A. The appraiser has appraised 320 acres of that property at one hundred dollars per acre and the other thirty at twenty-five dollars, and he has made a similar increase in all the other properties around the neighborhood.

Witness excused.
Defendant here closed.

820 Complainant hereby offers in evidence the deed of August 26th, 1902, executed before the notary by Palmer to Messrs. Garzot & Fuertes transferring to them the "Cercado Ramirez," which has already been introduced by the defendants and marked *"Exhibit 13 for Defendants,"* for the purpose of contradicting the testimony of the defendant Palmer with regard to the payment of twenty-five thousand dollars to Lopez Landrón as attorney for Igarrividez, and as to the receipt of the purchase price of the said "Cercado Ramirez"; and also to contradict the statement of Lopez Landrón that the money was delivered to him by Garzot & Fuertes.

821 Complainant hereby offers in evidence the complaint filed by her in the district court of Humacao for the purpose of contradicting the statement of Cuadra, Noya and Fuertes, by showing that the defendants to that suit were summoned on the thirty-first of December, 1901, and knew of the charges of fraud and deceit made by her in connection with the private agreement long before the decision of the Supreme Court of Porto Rico of June 4th, 1902, and also before the purchase by Garzot & Fuertes of the "Cercado Ramirez" in August, 1902, and the same is herewith filed and marked "Exhibit M, for Complainant."

822 EXHIBIT "M," FOR THE COMPLAINANT.

Filed July 11, 1905.

I, Enrique Rincón Plumey, Secretary of the District Court of the Judicial District of Humacao,

Certify: That in the record of the case for the nullity of a private contract of hereditary rights and of an expediente de dominio of several rural estates, instituted by Doña Maria Rios, widow of Rubio, against Doña Manuela Gutman, widow of Bustelo, and Doña Petronila Patricia Rios de Noya, there is a complaint which literally copied reads as follows:

To the Court:

Juan F. Vias Ochoteco, lawyer, in the name of Doña Maria Rios, widow of Rubio, of age, land owner and resident of this city, before the court appears and in accordance with law states:

That my client anxious to put an end to the state of undivided condition of the inheritance left by her father Don José María Rios, whose judicial testamentary proceedings and the shrewd machinations of his widow Doña Manuela Gutman seemed to be without an end, and have already lasted a quarter of a century, she entered into a friendly settlement with regard to the properties which might be adjudicated to her mother in her chacter of heir ab intestate of her son of the first marriage Don José Maria Rios Gutman upon making the liquidation of the conjugal property nothing would correspond with that character to said Mrs. Gutman by reason of her maladministration of the inheritance and by reason of her daily prodigalities which reduce the assets of the inheritance to an amount inferior to the amount of properties brought to the marriage by her deceased first husband Don José María Rios y Berrios; there intervened in the testamentary action aforesaid two lawyers, one representing the widow Doña Manuela Gutman, and the other her daughters of her first marriage Doña Maria and Doña Petronila Patricia, and

823 instead of stating in a public deed the result of the agreement, as it is provided by law, because of it being a transaction which involves the cession of hereditary rights, inserting in said deed the precise clauses to show the character of "reservables" of the properties adjudicated to Doña Manuela, they simply made a private agreement without any force, and even more, they left unfulfilled all

of the obligations freely contracted by this lady, who being ill-accustomed to administer properties belonging to strangers, wasting its products, she seems to think that it is lawful to keep in an eternal guardianship the daughters of her first marriage already emancipated in order to benefit, with them, the children had in her second marriage with Don Antonio Miguel Bustelo.

It is impossible, Honorable Judges, that this condition of affairs should be made perpetual with a manifest disregard of justice and law, and for that reason, prompted by the righteousness of the cause I appear before you to institute this complaint, exercising the action of nullity of private contract of transaction of hereditary rights entered into on the sixteenth of January last between my client, her mother Doña Manuela Gutman, and her sister Doña Petronila; requesting also the nullity of the expediente of dominion instituted by the lawyers of the parties, which is a consequence of said contract, and the nullity also of the inscription of said expediente which has been made or may be made in the respective Registry of Property; and in the improbable case that the nullities requested should not be declared, I also institute as an ancillary action the recission of said contract by reason of the non-compliance on the part of Doña Manuela Gutman and Doña Petronila Rios of the obligations therein contracted, with the annullment of the expediente of dominion and the inscription aforesaid.

Exercising therefore said action of nullity and its ancillary
824 action of recission as aforesaid, I institute this ordinary complaint against Doña Manuela Gutman, widow of Bustelo, of age, land owner and resident of San Juan and against Doña Petronila Patricia Rios y Gutman, accompanied by her husband Don Francisco Noya, both of age, land owners and of this city, basing the same upon the following facts and conclusions of law:

Facts.

Number 1. Doña Manuela Gutman, widow of Bustelo, at the time of the death of her first husband, Don José Rios y Berrios instituted in the extinguished Court of First Instance of the city, the corresponding voluntary testamentary proceedings for the purpose of partitioning equitably the inheritance between her and the three children had in her marriage with said gentleman named Don José María, Doña Maria and Doña Petronila.

2. That proceedings having followed their course the means employed by Mrs. Gutman to obstruct the final settlement of said estate were so many and so varied that although a quarter of a century has already elapsed these proceedings have only reached the stage of inventory and said lady has not give- bond as fixed for her to guarantee the faithful compliance with her trust of administrator of the estate of her deceased husband.

3. Said proceedings being pending Mrs. Gutman contracted second marriage with Mr. Miguel Antonio Bustelo, who was the judge who had jurisdiction of this case, and in this marriage they had five children named Carolina, Isabel, Sara, Miguel and Manuel.

4. Upon the death of Don José María Rios y Gutman, one of the children of the first marriage with Mr. Rios y Berrios, his legitimate mother Doña Manuela, instituted the proceedings of declara-
825 tion of heirs abintestate because of his death without a will and without legitimate descendants, and the Court of First Instance of Humacao, by decree of April twentieth, 1892, so declared her, said lady acquiring in her character of legitimate ascendant the proportional part belonging to her deceased son in the inheritance of her deceased husband.

5. The other two daughters of Mr. Rios, named Doña Maria and Doña Petronila being emancipated by law because of having reached their majority, and having contracted marriage, nevertheless they continue subject to the vexatious guardianship of their mother Doña Manuela Gutman, being absolutely deprived of their right to dispose of their properties without receiving an account of the administration of the estate belonging to them, and obliged to live out of the inadequate support of eighty two dollars per month furnished to them as a support by their ambitious mother.

6. During the disastrous administration of Mrs. Gutman the estate of Mr. Rios suffered such great and grave losses that to-day it scarcely suffices to pay the capital brought by the husband to the marriage, and one of the facts that best proves the little interest taken by that mother in the defense of the rights of her daughters is the circumstance of having permitted the sale at public auction for the payment of fees in the testamentary proceedings of forty acres of superior quality land situated in the very centre of the plantation "Mulas" precisely at a time when she had sufficient cash to attend to this obligation, because of having collected a few days before from her son-in-law Don Ricardo Rubio for the lease of one of the properties included in the inheritance the gross sum of two thousand six hundred dollars provincial coin. The forty acres sold at public auction passed afterwards to the ownership of the daughters of the second marriage of Doña Manuela Gutman.

7. Such condition of affairs was unbearable; Doña Maria
826 and Doña Petronila had many children to whose support and education they had to attend and hence they called upon lawyer Cuadra to take the necessary steps in said testamentary proceedings of Mr. Rios y Berrios, and as soon as these steps were started the lawyer of San Juan, Mr. Rafael Lopez Landron, and representing Doña Manuela Gutman, proposed a settlement for the purpose of determining the properties which should be adjudicated to each one of the heirs, with the absurd contention that they should not have the character of "reservables" for the daughters of her first marriage those that might be adjudicated to his client through inheritance from her son of the second marriage, named José Maria.

8. My client never accepted this inexplicable contention of her mother and only acceding that there should be adjudicated to her the properties within the jurisdiction of Naguabo, which are the ones of the greatest value in the inheritance with the character and condition that they had in accordance with law and releasing her from the duty of rendering justified and concise accounts of the immense

prodigalities which caused the partial loss of a capital which by reason of its importance and quality should have had a great increase.

9. Under this basis and always with the denial of my client to assign rights which she should not give up to the prejudice of her innocent children, a private contract of transaction was drawn up in which, without specifying, as it should have been done, the true title of acquisition by Doña Manuela, it is only stated therein that the properties in Naguabo shall be retained by her, the said lady, as coming from the estate of her deceased first husband José Rios y Berrios, it further stating that the contracting parties shall remain exclusive owners of her share without reservation or limitation whatsoever.

10. By clause 5 of said illegal private contract of transaction herein referred to it is stipulated that as soon as the transaction is signed before witnesses by the contracting parties it shall be
827 made a public deed within forty eight hours following the day of its date, or as soon as the notary of this city shall return, and neither Doña Manuela Gutman nor Doña Petronila Rios de Noya have complied with this obligation imposed by the contract despite the fact that the notary Don *Don* Antonio Aldrey was requested to draw the proper notarial document.

11. Besides the fact that that deed was not executed which was essential for the validity of the contract of transaction, the lawyers Rafael Lopez Landron and José Maria Cuadra, without the consent the latter of his former client Doña Manuela Maria Rios, instituted, contrary to the provisions of the Mortgage Law, which only in the absence of a written title authorizes the approval of dominion judicially, and expediente of dominion improper because there existed perfect titles of dominion and in the petition of said expediente it is alleged as title of acquisition of Doña Manuela instead of the hereditary title that of transaction with the purpose*ly* undoubtedly of leaving surrounded by doubts the character of "reservables" of the properties which might be adjudicated to her as heir of her deceased son Don José Maria.

12. The skillful way employed both in the private contract and in the expediente of dominion to neutralize contrary interests, inducing the contracting parties into error, they did not convince in any manner my client, and for that reason exercising a right which cannot be denied to her, withdrew her representation from the lawyer to whom unfortunately she had entrusted her defense, without prejudice to a claim of the corresponding responsibility, and she in the expediente de dominion asked what was thought convenient to safeguard her threatened interests.

13. By clause first of said private contract of transaction referred to Doña Manuela Gutman obligated herself to deliver to the
828 daughters of the first marriage named Doña María Guadalupe Rios widow of Rubio and Doña Petronila Patricia Rios de Noya, all the lands at present composing the property named "San José de las Mulas" and not only did not comply with it, but continued in the possession of that property in her character

as owner collecting from my client the price of the lease in accordance with the agreements that they have long ago entered into.

14. Also by clause 2nd of the said contract Doña Manuela Gutman obligated herself to deliver immediately to her said daughters the lands composing the property "Culo Prieto" within the jurisdiction of Naguabo, and this delivery has not been made up to the present time, despite the fact that Doña Maria has instituted proceedings to avoid litigation or conciliatory action for that purpose against said Doña Manuela, to which the said Doña Manuela did not even answer.

To these facts the following conclusions of law are applicable:

1st. Acts executed against the provisions of the law, save the cases in which the same law declares valid, are void.

Article 4 of the Civil Code.

2nd. It shall be made to appear in public deed, first acts and contracts which have for their object the creation, transmission, modification or extension of rights in real properties; second, the cession, repudiation and renunciation of the hereditary rights and rights of conjugal partnership; and third, the cession of the rights or actions derived from an act contained in a public deed.

Article 1280 of the Civil Code.

3rd. The action of nullity of the contract may be exercised by those obligated principally or secondarily by virtue thereof.

829 Article 1302 of the same Code.

4th. When the nullity of an obligation is declared the contracting parties shall mutually reimburse each other the things which were the subject of the contract.

Article 1303.

As a consequence of the foregoing provisions the properties included in the private contract of transaction, the nullity of which is asked, must be reimbursed or returned to the estate until they are adjudicated to the heirs in accordance with law.

5th. The maxim of the civil law "Quod ab initio nullum est, tractu tempore convalescere nom potest."

6th. The inscription does not make valid the acts or contracts which are void in accordance with law.

Article 33 of the Mortgage Law.

7th. The power to rescind an obligation is tacitly included in mutual obligations in case one of the obligated parties does not comply with his part. The prejudiced party may choose between enforcing the compliance or asking for the re-cis-ion of the obligations with the damages and interest in both cases.

Article 1124 Civil Code.

8th. The validity and fulfillment of the contracts cannot be left to the judgment of one of the contracting parties.

Article 1256.

9th. Contracts validly executed can be rescinded in the cases established by law.
Article 1290.

10th. Among others the contracts in the cases especially determined by law are rescindable.
Article 1281, No. 5.

11th. The losing party shall be condemned to pay all costs.

By virtue of the foregoing reasons I pray the court that considering this complaint presented, with its copies, and my appearing on behalf of my clients, to admit this complaint, and order that
830 the same should follow the course of the law in accordance with General Order No. 118, and to summons and cite the defendants to appear and answer the same within twenty days if they should deem it convenient, and in due time to render judgment declaring null and without any value or effect the private contract of transaction of hereditary rights of January sixteenth, ultimo, referred to in the body of this complaint. To also annul the expediente of dominion instituted for the purpose of inscribing the properties adjudicated by virtue of said transaction and to annul also the inscriptions which have been made or may be made upon presentation of the copy of the final decree approving the said expediente; and in the improbable case that the annullment prayed for should be denied that the court should declare rescinded and without any binding force between the parties the said private contract and ordering that the properties, the subject of said transaction, should return and be considered as an integral part of the undivided inheritance left upon the death of Don José Rios y Berrios, with the corresponding nullity of the expediente of dominion instituted as a consequence of said transaction, and of the inscriptions made of said expediente in the Registry of Property, and to condemn the defendants to pay the damages and losses, and in all events the costs of this suit, all in accordance with justice which I ask at Humacao on the tenth day of December, 1901.

NOTE 1.—In acordance with Article 88 of the regulations of the Mortgage Law the judges and tribunals before whom the nullity of an inscription is prayed shall make the same known to the respective Registry of Property to enter a marginal note to which the second paragraph of said article refers. This step is of a very
831 urgent character if the same should have the desired effect and to save the interests of my client threatened by a simulated transfer which might be made by the defendant Doña Manuela as soon as the inscription of the properties adjudicated to her is made by virtue of the expediente of dominion instituted and which properties are the following:

A. A rural estate named Islote or Islote Rivalta, composed of 150 cuerdas of land of the first class, equivalent to 58 hectares, 96 ares, situated in the barrio of Rio Abajo within the jurisdiction of Naguabo, bounded on the north by the branch of the river Viejo which separates it from the lands of Don Juan Burzo; on the east by the

same branch of the said Rio Viejo which separates it from the "Cercado Ramirez" of Doña Manuela Gutman widow of Bustelo, up to the meeting place of this branch of the river with the river Blanco Moderno; on the south by the river Blanco Moderno which separates it from other lands of Don Pilar Ojea, at present his assignees, and on the west by lands of Don Cristino Lebrón and the succession of Don Ramón Argueso, from a bamboo tree to the bank of the Rio Blanco up to the confluence of a ditch with the said branch of the river Viejo.

B. Another rural estate adjoining the former named Cercado Ramirez, composed of 350 cuerdas 535/1000ths of another, equivalent to 137 hectares 77 ares of land of the first class, situated in said barrio of Rio Abajo, bounded on the north by lands of Don Juan Burzó and others named San Francisco, formerly belonging to Don Bonocio Burzó; on the east by Don José Perez Villamil, at present Don Prudencio Barriola, a ditch between, formerly Don Francisco Burzó by lands of Don Juan R. Garzot and Don Ramon P. Villamil, formerly Don Francisco Burzó, up to near the mouth of the Rio Blanco; on the south by the said Rio Blanco which separates it from Don José del Carmen Borges and Don Prudencio Barriola and the property named "de Los Puentes" belonging to Doña Manuela Gutman widow of Bustelo, and on the west by the Rio Blanco which separates it from the property named "Madame Duran" belonging to the said Doña Manuela Gutman, and by lands of Don Manuel Argueso, formerly Don Pedro Lebron, and besides by part of the branch namer Rio Viejo which separates it from the Cercado named "Islote Rivalta" belonging to Doña Manuela Gutman.

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C. Another rural estate or property named "Madam Duran" composed of 107 cuerdas and 468/1000ths of another, equivalent to 42 hectares 24 ares level land and mountains, situated in the same barrio of Rio Abajo within the jurisdiction of Naguabo, bounded on the north by the Rio Blanco which separates it from the Cercado Ramirez of Doña Manuela Gutman and by part of the lands of the Succession of Don Ramón Argueso, formerly Don Pedro Lebron; on the west by the said Rio Blanco, which separates it from the said Cercado Ramirez and by parts of the lands of Don Juan Burzo; on the south by lands of Don Juan Burzo and on the west by lands of the Succession of Don Ramon Argueso, formerly Don Pedro Lebrón.

D. Another real estate named "Los Puentes" situated in the barrio of Rio Abajo within the jurisdiction of Naguabo, composed of 36 cuerdas with 226/1000ths of another, equivalent to 14 hectares with 23 ares of level land, crossed by a road, bounded on the north by lands of Don Juan Burzo and the Rio Blanco which separates it from the Cercado Ramirez of Doña Manuela Gutman; on the east by the said Rio Blanco, boundary line of the Cercado Ramirez and lands of Don Francisco Burzo; on the south by lands of Don Francisco Burzo at an angle with the river Anton Ruiz, and on the west

by lands of Don Juan Burzo, at an angle with the said river Anton Ruiz.

E. Another real estate named Cercadó Torres, also known by the name of "Maizales," composed of 223 cuerdas with 140/1000ths of another, equivalent to 87 hectares 112 ares of land of the first class and hilly, situated in the barrio of Rio Abajo, within the
833 jurisdiction of Naguabo, bounded on the north and east by lands of Don Jesus Pereyó, formerly Don Esteban Garriga; on the south by the plantation named Islote Quiñones, from which it is separated by the river, and also by lands of the Succession Rios y Berrios and the river Blanco running between; and on the west by the river Blanco which separates it from part of the lands of Don Arturo Gallardo and Don Ramón Villamil, and the rest bounded by Don Marcelino Borges and Don Ramón Villamil, formerly Don Eladio Saldaña.

F. Another rural estate named Cercado Maldonado, situated in the same barrio of Rio Abajo, within the jurisdiction of Naguabo, composed of 35 cuerdas and 190/1000ths of another, equivalent to 3 hectares *with* 832 ares of land; bounded on the north by the lands of Don Jesus L. Pereyó, formerly Don Rodulfo Maldonado; on the east by the small cañon which separates it from the lands of Don Jesus L. Pereyó, formerly Maldonado, and by the river Viejo which separates it from the lands of the Succession of Don Ramon Argueso, formerly Don Cecilio Rodriguez; on the south by the River Viejo which separates it from the property "Islote Quiñones of Doña Manuela Gutman, and on the west by a small cañon which separates it from the lands of the Cercado Tores belonging to said Mrs. Gutman.

G. Another rural estate named "Islote Quiñones" situated in the barrio of Rio Abajo within the jurisdiction of Naguabo, composed of 98 cuerdas with 75/1000ths of another, equivalent to 34 hectares and 628 ares of low land, bounded on the north by the River Viejo which separates it from the Cercado Maldonado and the Cercado Torres belonging to Doña Manuela Gutman; on the east by lands of the Succession of Don Ramón Argueso, formerly Don Cecilio Rodriguez, at present Doña Carmen Fuertes; on the south by the river Blanco which separates it from the lands of the Succession of Don José Rios y Barrios, and on the west by the same river, the plantation "Mulas" and the Cercado Torres.

834 Having inscribed the foregoing properties belonging to Doña Manuela Gutman on the margin of which inscription there must be entered the annotation of the nullity hereinabove referred to it is beyond doubt that in accordance with the provisions of Article 460 of the Law of Civil Procedure, and supported by the illustrious opinion of the annotator Manresa, it is undoubtedly of an urgent character the complaint of nullity instituted as the main action through this complaint for the purpose of its admission without the previous requisite of an act of conciliation, and in consequence thereof, by reason of the irresistible reasons set forth, I pray the court to issue to the Registry of Property of this district the proper order making known to him the complaint of nullity re-

quested of the inscriptions already made or which may be made by virtue of the expediente of dominion referring to the properties above described, and the court, for the present, will refrain itself from taking any action on the principal prayer and further notes of this complaint until the certificate of the act of conciliation which shall be attempted in due form is presented. Justice and dated as aforesaid.

Note 2. Having to prove the facts I pray the court to set this case at the due time for the introduction of evidence. Justice as aforesaid.

Note 3. In accordance with the provisions of Rule 70 of General Order No. 118, I reserve to myself the right to introduce documents to be used in evidence in this case at the time of the appearance of the parties as aforesaid. Justice and date as aforesaid.

Lawyer JUAN F. VIAS.

I also certify that this complaint was notified to the parties on the thirty-first of December, 1901.

834½ Complainant hereby offers in evidence the latter part of this same document (last above referred to) containing the complaint of Doña Petronila against Doña Manuela Gutman dated December 26th, 1901, for the purpose of contradicting the testimony of Doña Petronila by showing that she had made claims against her mother judicially and privately as well, and to show that the said private agreement of transaction had been disregarded by said Doña Manuela by her resusal to deliver to the defendant Petronila her participation in the plantation "Mulas" and the same is herewith filed and marked "Exhibit N for Complainant."

835 EXHIBIT "N" FOR COMPLAINANT.

Filed July 11, 1901.

I, Enrique Rincon Plumey, Secretary of the District Court of the Judicial District of Humacao,

Certify: That in the same proceedings there is a petition for the delivery of lands instituted by Doña Petronila Patricia Rios, which literally copied reads as follows:

To the Court:

José María Cuadra, lawyer, in the name and representation of Doña Petronila Patricia Rios Gutman de Noya, of age, married, resident of this city, accompanied by her legitimate husband Don Francisco Noya y Frias, before the court appears and in accordance with law alleges:

That my client finds herself, against her will, obliged to have recourse to judicial proceedings, interposing this complaint in ordinary action of larger amount against Doña Manuela Gutman, widow of

Bustelo, resident of San Juan, to obtain from her the real and immediate delivery of all the lands and appurtenances composing the property named "San José de las Mulas," situated in this jurisdiction, with the exception of a portion included therein, composed of forty cuerdas belonging to the Succession Bustelo, and also the real and immediate delivery of the lands composing the property "Culo Prieto" situated in the jurisdiction of Naguabo, with the corresponding indemnity of damages and losses, as it appears from the following facts.

1st. By agreement entered into in private document on the sixteenth of January of this year between Doña Manuela Gutman widow of Bustelo, with the intervention of her lawyer Don Rafael Lopez Landron, and Doña Maria Rios Gutman widow of Rubio, and Doña Patronila Patricia Rios de Noya, with the intervention of their undersigned attorney, the said ladies, widow of Bustelo, widow of Rubio and Mrs. Rios de Noya, put an end to their differences of all kinds, entering into a complete and absolute transaction of all the hereditary rights to all the parties left at the death of Don
836 José Rios y Berrios as a means of dissolving in a definite manner the co-ownership existing up to that time in the inheritance left upon the death of the father Mr. Rios y Berrios.

2nd. It was especially agreed and it was the foundation of the obligation contracted by Doña Manuela Gutman, widow of Bustelo, that this lady in whose possession and enjoyment have remained always the properties of the inheritance of Mr. Rios y Berrios, in her character of administratrix to the time of the transaction, should make delivery in a definite and immediate manner to her daughters of the first marriage named Doña Maria Guadalupe Rios widow of Rubio and Doña Petronila Patricia Rios de Noya, of all the lands and appurtenances composing the property named "San José de las Mulas" with the exception of a portion of forty acres belonging to day to the succession Bustelo, and also the properties composing the estate named "Culo Prieto" within the jurisdiction of Naguabo.

3rd. Although Mrs. Gutman widow of Bustelo adapting herself to the transaction agreed upon has retained for herself as the only and exclusive owner in full dominion of all the remaining properties within the jurisdiction of Naguabo left at the death of Don José Rios y Berrios, numbering nine hundred and forty cuerdas more or less and leasing it to the firm of Garzot & Fuertes of Naguabo which pays her enormous rents for said property; that is to say, while the widow of Bustelo benefits herself luxuriously with the results of the transaction not questioned by this party, this is the time that my client Doña Petronila Patricia Rios de Noya has not received a single grain of all the lands that said lady obligated herself to deliver in an immediate manner. Nothing can be more whimsical or unjust.

4th. On different and repeated times my client has claimed by letter from Doña Manuela the delivery of said lands and this lady, deaf at least to the voice of the contract, has remained impassive and silent to the fulfillment of her obligations. This abandon-
837 ment, this negligence, this forgetfulness of a contractual obligation has caused my client enormous losses, especially tak-

ing into consideration that the immediate delivery of the lands herein claimed was the decisive cause of the obligation. To this fact my client attributes the material impossibility for her to carry out the transactions of very great importance which she agreed at the time of the transaction; transactions that promised her advantages, and that the same lady Gutman, widow of Bustelo, has converted into illusions which have disappeared like the smoke in the immensity of Heaven.

Thus things were, and such an unjust procedure and inexcusable conduct have caused to my client damages which up to the present time aggregate the sum of two thousand dollars which she shall in due time prove in a most convincing and clear manner.

Conclusions of Law.

1st. Obligations arising from contracts have the force of law between the contracting parties and must be fulfilled in accordance with the same.

Article 1091 of the Civil Code.

2nd. When the thing to be delivered is a determined thing the creditor independently of the right given to him by Article 1101 of the Civil Code may compel the debtor to carry out the delivery. If the thing were undetermined or general he may request the fulfillment of the obligation at the expense of the debtor. If the obligated party is tardy or has obligated himself to deliver the same thing to two or more adverse persons, he shall be responsible for those cases until the delivery is made.

Article 1096 of the Civil Code.

3rd. If a party obligated to do a certain thing, from the time that the creditor should require it judicially or extra-judicially the fulfillment of the obligation, it shall not be necessary the demand in order that the delay should exist when from the nature of
838 the circumstances it appears that the time for the making of the delivery of the thing or the performance of the service was the fundamental motive for the creation of the obligation.

Article 1100 of the Civil Code.

5th. There shall be subject to indemnity for damages and losses those who in the fulfillment of their obligations incur any fraud, negligence or delay, or those who in any way should contravene the tenor thereof.

Article 1101 of the Civil Code.

6th. A debt shall not be considered paid until the thing is completely delivered or the services in which the obligation consists performed.

Article 1107 of the Civil Code.

7th. A contract exists from the time that one or various persons consent in obligating themselves with respect to another or others to give or to render a service.

Article 1254 Civil Code.

8th. The validity and fulfillment of a contract cannot be left to the judgment of one of the contracting parties.

Article 1256 of the Civil Code.

9th. Contracts are perfected by the mere consent and from that time on obligate not only to the fulfillment of that which is expressly contracted, but also to all the consequences that, in accordance with its nature, may be conformed to the good faith, to the use and to the law.

Article 1258 of the Civil Code.

10th. The transaction has among the parties the authority of *res adjudicate*.

Article 1816 of the Civil Code.

11th. Every litigant whose claims are totally disallowed must be condemned to pay the costs.

General Order No. 118.

12th. There are exempt from the act of conciliation proceedings instituted against persons who reside within the jurisdiction
839 of the court in which the complaint is held.

Par. 5, Art. 459 Law of Civil Procedure.

Wherefore, exercising the personal action corresponding to my client I pray, that considering this complaint presented, with its copies, to admit it, notifying for a period of twenty days to Doña Manuela Gutman widow of Bustelo for her to appear and answer the same if she deem it convenient; to conduct the same through the course of an ordinary action of larger amount to which it corresponds, and finally to sustain the same and to condemn the said lady Gutman widow of Bustelo to make real and immediate delivery to my client Doña Petronila Patricia Rios de Noya of all the lands and appurtenances composing the property named San José de las Mulas, situated in this jurisdiction with the exception of the forty cuerdas belonging to the Succession of Bustelo, and also to make real and immediate delivery of the lands composing the plantation "Culo Prieto" in the jurisdiction of Naguabo, and leaving my client in the full possession and tranquil enjoyment of the said properties; to pay to her the sum of two thousand dollars for damages and losses caused to her and to pay all the costs accrued and which may arise hereafter, all in accordance with justice asked in Humacao on the 26th day of December, 1901.

NOTE.—As Doña Manuela Gutman resides in San Juan, Porto Rico, it is proper and I pray the court that through me there may be issued a communication to the Municipal Judge of San Francisco in said city to cite and summon the defendant with the delivery to her of a copy of this complaint, all in accordance with justice which I ask in Humacao date as aforesaid.

NOTE.—In case the defendant should deny the facts alleged in

this complaint or may not be in conformity with them, I
840 pray the court to set the day and hour for the introduction of evidence in this case and to offer those which I intend to use. Justice as aforesaid.

NOTE.—I designate as my agent in this case, so that he may be informed of the different steps taken in this case, the neighbor Candelario, who has all the qualifications of law. Justice as aforesaid.

Lawyer JOSÉ MARIA CUADRA.

And at the request of a part- in interest I issue the present copy under my hand and seal of the District Court of Humacao on the first of April, 1905.

(Signed) ENRIQUE RINCON,
Secretary of the District Court.

There is a seal of the Court. There are two revenue stamps cancelled by the seal of the court.

841 Complainant calls the attention of the court to the fourth statement of facts of said complaint.

Complainant hereby offers in evidence "Exhibit 10" already introduced by the defendants for the purpose of contradicting the offer made by the defendants of said document and to show that the property "Braziles" mentioned in said deed is not the subject of this suit and was inherited directly by Doña María and Doña Petronila from their grandmother, and is not a part of the inheritance of their father José Rios y Berrios.

Complainant hereby offers in evidence the deed of lease of the properties within the jurisdiction of Naguabo executed by Doña Manuela Gutman to Don Genaro Almodova on May 17th, 1876, for the purpose of contradicting the testimony of Lopez Landrón that Doña Manuela had paid out of her own capital several debts, among those, a credit of Doctor Almodova; and also for the purpose of showing the rental value of these properties at that time as distinguished from the properties within the jurisdiction of Humacao, as "San José de las Mulas," and "Culo Prieto." And the same is herewith filed and marked *"Exhibit O. for Complainant."*

842 EXHIBIT "O" FOR COMPLAINANT.

No. 101.

Lease.

In the town of Humacao on the seventeenth day of May, 1876, before me Don José Avelardo Cajas y Marchado, notary of the College of Porto Rico with residence in Hato Grande and temporarily in charge of the notarial office of this town by superior orders in

which I am at present on this date at the request of the parties in interest and witnesses hereinafter mentioned, there appeared:

Doña Manuela de Gutman de Rios, at her home where I went at her request, widow in her first marriage with Don José Rios y Berrios, land owner, thirty years old, resident of this town, barrio of San Francisco, and

On the other side Dr. Don Genaro Almodovar y Saldaña, resident of Juncos, registered in the town and Comercio street according to their respective cedulas exhibited to me, and assuring me to be in the enjoyment of their civil rights and in their legal capacity for the execution of this instrument, the first party alleges:

That in her own right and as tutor and curator of her minor children Doña Maria Josefa Guadalupe, Petronila Victoria, Don José Maria de Jesus and Doña Petronila Patricia Manuela, had in her first marriage with the deceased Don José Rios, according to copy of the appointment exhibited to me, which appointment took place on the fifteenth of September, 1875, in the court of this town by the Judge of the First Instance Don Atoltho Sanchez Cortorrelo, sufficient in what may be necessary she leases to the second party the following properties:

Cercado de Torres or Maizales composed of two hundred and twenty three cuerdas and 150/1000 thousandths of another:

Islote Quiñones, composed of eighty eight cuerdas and 95/1000ths of another.

Cercado Maldonado, composed of 35 cuerdas 190/1000ths of another.

843 Cercado de Garriga, or Yslote Rivalta, composed of 150 cuerdas.

Cercado Ramirez, composed of 350 cuerdas 535/1000ths of another.

"De Madama Duran" composed of 107 cuerdas and 468/1000ths of another, and

De las Puentes, composed of 36 cuerdas and 223/1000ths of another.

Which properties aggregate in all one thousand three hundred and eight cuerdas and 651/1000ths of another, situated in the barrio of Rio and Maizales, within the municipality of Naguabo, bounded on the river known as Las Puentes, Burzo Hermanos, Don Eladio Saldaña, Don Rodulfo Maldonado, Don Ramon Argueso and Don Pilar Ojea, and are the same properties which belonged to her deceased husband and were included in the general inventory in his testamentary proceedings and adjudicated partly to her and partly to her children, which properties she hereby leases under the following conditions:

First. Mr. Almodovar may and shall use the properties mentioned, dedicating them to the fattening of cattle as he may deem best, for the period of six years, to begin from this date and to expire on the same day and month of eighteen hundred and eighty two.

Second. As the foregoing properties have been used for many years as a place for the gathering and shipping of cattle to foreign

Antilles, it is hereby agreed that upon transferring the properties or the usufruct, Doña Manuela renounces the continuation of said business binding herself to its fulfillment.

Third. Don Genaro Almodovar obligates himself to pay to the lessor the annual rent of eight thousand dollars.

Fourth. Doña Manuela Acknowledges to be really indebted
844 to Don Genaro Almodovar by liquidation of accounts made to date and proceeding from debts due by her said deceased husband Don José Rios, in the sum of fifteen thousand nine hundred and sixty six dollars and eighty cents ($15,966.80) usual and current coin, which at the same time bears interest at the rate of twelve per cent. per annum capitalizing them every year.

Fifth. Don Genero Almodovar out of the eight thousand dollars of the lease which he must pay to Señora Gutman, or her successors, shall only deliver to her two thousand dollars and shall retain the six thousand dollars remaining to extinguish the credit acknowledged, bearing interest of twelve per cent. per annum.

Sixth. It is a condition of this contract that Almodovar shall besides the enjoyment of the properties have the use of the buildings located upon them and twenty cuerdas of land more, which really belong to Cristobal Paxot, having been promised to be sold to her deceased husband Don José Rios; but in case this contract should not be carried out and it should be necessary to deliver them to the owner Patxot there shall not be any reservation of damages nor indemnity of any kind.

Seventh. The period of the lease having expired, Señora Gutman shall re-enter the properties without the payment of the improvements made thereon.

Eighth. The lessee may partially or generally sublet the properties during the time mentioned, binding them, as he hereby binds himself, to the payment of the royal and municipal taxes which may be imposed upon the properties from the first of July next.

Ninth. The period of this lease shall not be shortened by the contracting parties either during life or by death, unless they shall mutually agree otherwise, and in case of force or gratuitous sale the lessee shall be preferred under the same conditions and
845 then the amount remaining due from Doña Manuela Gutman shall be considered liquidated and due.

Tenth. Under the foregoing conditions and the obligation on the part of the lessor to preserve the lessee in the quiet and peaceful possession of the property, they respectively obligate themselves to fulfill the foregoing stipulations and for that purpose they obligate their properties both present and future as far as they can renouncing the laws in their favor which prohibit the general obligation in form.

In testimony whereof it is executed and signed with the witnesses present and residents Don José Berbe, Sheriff of the Court, Don Bartolomé Azpurua, Secretary of the Justice of the Peace, and Don Tomás Muñoz, Clerk, to whom and to the contracting parties I have fully read this deed at their request after informing them of the

right they has to read it personally, and which persons, professions and residence I know, to which I certify.

MANUELA G. DE RIOS.
GENARDO ALMODOVAR.
JOSÉ BERBE.
BARTOLOMÉ AZPURUA.
TOMAS MUNO.

Mark—
JOSÉ A. CAJAS.

Don Antonio de Aldrey y Montolio, Notary of the Island of Porto Rico and general keeper of the protocols of the notarial district of Humacao, with residence and office open in said city, certify:

That the foregoing copy corresponds well and faithfully with the original of its contents, kept in the archive of this notarial office under my charge, to which I refer.

In witness whereof and at the request of Doña Maria Rios, widow of Rubio, I issue the present first copy which I sign, mark and rubricate in two sheets of notarial paper of my own use, affixing thereto
a revenue stamp of fifty cents according to the provisions of
846 the revenue law and taking note of this issuance in Humacao on the twenty-fifth day of May, 1905.

(Signed) ANTONIO DE ALDREY, *Notary.*

There is a notarial mark.

There is a revenue stamp of fifty cents cancelled by the seal of the notary.

847 Counsel for defendants objects to the foregoing document on the ground that it is immaterial, too remote from the date of the controversy to be a basis of comparison.

Overruled as to admission as contradiction of witness, only sustained upon the other point.

Complainant hereby offers in evidence the deed of lease of the plantation "San José de las Mulas," executed by Doña Manuela Gutman on June twentieth, 1876, for the purpose of showing the collection by Doña Manuela of the rental of these properties,
848 and its amount; also for the purpose of contradicting the testimony of the witness for the defendants, Rafael Rocca, that the properties of Naguabo produce less than the properties within the district of Humacao, for example, "Las Mulas," and the same is herewith filed and marked "Exhibit Q for Complainant."

849 EXHIBIT "Q" FOR COMPLAINANT.

No. 135.

Lease.

In the town of Humacao on the twentieth day of the month of June, 1876, before me Don Jose A. Cajas y Marchado, notary of the

College of Porto Rico, with residence in Hato Grande, at present in charge of the notary of this city by superior orders, and the witnesses hereinafter mentioned there appeared:

On the one side Doña Manuela de Gutman, widow in her first marriage with Don Jose Rios y Berrios, thirty years old, of this vicinity, and registered in the barrio of Santiago, and

On the other Don Ygnacio Olazagasty, planter, unmarried, fifty years old, within the municipality of Yabucoa, and registered in the barrio of Camino Nuevo, and Don Gerardo Saiz, unmarried, business clerk, twenty years old, within this municipality and registered in the barrio of La Playa, according to cedulas issued in the current year and exhibited to me and returned to them, and who assuring me to be in the free administration of properties, in the full enjoyment of their civil rights and therefore with the necessary legal capacity for the execution of this instrument, they allege:

That Señora Gutman in her capacity of tutor of her minor children had in her legitimate marriage with Don José Rios, named Doña Maria Josefa Guadalupe Petronila Victoria, Don José Maria de Jesus and Doña Petronila Patricia Manuela, which appointment was made by the Judge of the First Instance of this district on the fifteenth of September of last year 1875 and has been exhibited in previous deeds, and she being firmly convinced that it is to her advantage and the betterment of her interests she has agreed with the other parties Olazagasty and Sainz to lease to them the sugar plantation belonging to her wards, named "San Jose" or "Mulas," and situated in the barrio of Anton Ruiz within the jurisdiction of this town. In consequence whereof by this deed she executes the lease under the following basis, clauses and conditions:

First. The plantation measures an area of one thousand six hundred and seventy six cuerdas and 126/1000ths of another, not including in the lease the lands already leased to the widow and children of Don Francisco Mandrey and Don Domingo Ramirez, so that the lessees Olazagasty and Sainz will lease the remaining part, bounded as follows: On the north by the properties leased by said Ramirez, following the mountain which separates the jurisdiction of Naguabo and the properties of Doña Andrea of the same name, Don Francisco Burzó and Don Francisco Peres; on the south by the property of Don Atanasio Cuadra, and that of Pasto Viejo of Doña Petronila Berrios, and on the west by the plantation of the Succession Lopes y Morales.

Second. There is included in the lease not only the buildings and the machinery dedicated to the grinding of cane, but also the houses, the shed and bagasse ranches and the rest that may be built upon the lands leased, as well as the farming implements of the manufacturing plant in which are included carts and whatever is necessary and beneficial to a sugar estate and is used to-day for the purpose of making sugar.

Third. There is also included in the lease as necessary to the property the cattle used therein composed of fifty teams.

Fourth. The lessees from this day forward take charge of the

leased properties and the canes growing thereon as well as the root of the cane, save the exception hereinafter mentioned, re-
851 ceiving the 89 cuerdas with 87/100ths of another planted with shoots, assessed in or ay sixteen pesos each, and the seventy-five of spring planting in twenty five dollars each, that is, one with another, in three thousand three hundred and twelve dollars and ninety two cents.

Fifth. The lessees shall not take charge of the plant and other buildings and fixtures corresponding to the plantation until Doña Manuela Gutman finishes the grinding of fifty cuerdas of cane more or less which are about to be cut for grinding, and upon the day of its delivery and receipt respectively it shall be made by duplicate inventory.

Sixth. The shoots or stumps of the canes remaining to be ground in the present crop, and as is inferred from the foregoing clause, belong to the minor children Rios, shall be received by the lessees by previous assessment.

Seventh. The lessees shall return with the exception of the cases of Article 14 everything that is included in the inventory in the same condition in which they received it.

Eighth. The period of the lease is eight years which shall expire at the end of the crop of the coming year 1882 at which time the lessees shall make the formal delivery of the plantation and its appurtenances, and Doña Manuela Gutman shall execute the proper public deed showing this receipt so that they may remain free from any responsibility.

Ninth. The price of the lease is $4500.00 the first year, $4725.00 the second, and $5000.00 each one of the four remaining years, payable the first two corresponding to the years 1877 and 1878 in the month of February and the rest in the month of June—I mean July.

852 Tenth. The delivery to the lessees of the manufacturing plant, buildings, fixtures and the rest not received shall be made by Doña Manuela Gutman necessarily in the next month of August, by which time the cane cut shall be all ground, and it shall not be an excuse nor reason of delay for its delivery the fact that it is not.

Eleventh. During the crop of the last year of this lease and as soon as the cane has been cut for its grinding Doña Manuela shall take charge of the stumps to attend to their cultivation, making previously the assessment, so that at the end of the crop its total value may be calculated and the canes growing for the next crop.

Twelfth. If the value of the stumps and cane growing mentioned in the foregoing clause shall not equal the value received by the lessees they shall reimburse the differences in cash, and in the same manner they shall receive from Doña Manuela Gutman the excess which they may have upon the latter.

Thirteenth. The cattle shall be received and returned by assessment in the same or other heads.

Fourteenth. The preservation and ordinary repairs needed by the

buildings and the machinery of the plantation for its working and manufacturing purposes shall be on account of the lessees, and a destruction or deterioration caused by cyclone, tornadoes, fires, or any other act of God suffered by them shall be charged to the minor children Rios, of whose account shall be the rebuilding and extraordinary repairs which shall be made or directed by the lessees in accordance with their mother and tutor Doña Manuela Gutman, or their legitimate representative.

853 Fifteenth. The said tutor of the minor Rios obligates in the name of the latter not to sell the plantation leased within the period of the lease without imposing upon the bidders at the time of publishing the public sale required by reason of their being minors, the express condition that they must stay and abide by this contract, and for the purpose of preventing them from acting contrary thereto this clause shall be annotated in the registry of mortgages.

Sixteenth. Besides the legal mortgage or privilege had by the minor children Rios upon the products of the plantation leased for the collection of the price of the lease, Don Ignacio Olazgasty hereby mortgages for the security of the obligations contracted by him his sugar plantation "Llante," situated in the town of Yabucoa, barrio of Camino Nuevo, which he acquired by purchase from Don Gregorio Lastra according to deed executed in Yabucoa on the eleventh of September, 1873, before the notary of the same, the original of which I had before me, bounded as follows: On the north by Don Francisco Dávila, Francisco Vega and Maria Matea; on the west by Inocencio Berrios—I mean Rodriguez; Carmen Neco, Manuel Neco, Pablo del Moral, Guillermo Lugo, Miguel Vega, Juana Gonzalez and Candido Morales; on the south by Martin and Vicente Morales; Isidro Solis; Andrés, Agapito and Ramon Morales, Anselmo Ferrer, Marcelina Fuentes and Florencio Morales; and on the east by the sea and the Succession Calixto Fuentes.

Seventeenth. The payments of taxes which may be imposed upon the plantation San Jose during the six years of the time of this lease by reason of subsidized public expenses and other kinds of taxes shall be by account and charged to the lessees.

854 Eighteenth. I, the notary, informed the parties of their duty to register this deed in the office of mortgages of the district within six days as fixed by law under the penalty of nullity of the provisions contained therein.

Nineteenth. The parties obligate themselves to keep, comply with and execute the provisions of this deed under the responsibility of the damages caused thereby, responding with their properties present and to be acquired and renouncing the laws in their favor in general manner.

In testimony whereof so it is executed and signed together with the witnesses present and residents, Don Estanislao Fernandez, clerk; Don José Barbe, and Don Francisco Laviada, sheriff, to whom and to the parties I have fully read this deed at their request after having been informed of the right they had to read it personally, and which

persons, professions and residence I know, to all of which, as well as to the contents of the same I certify.

MANUELA G. DE GUTMAN.
G. SAIZ.
IGNACIO OLAZGASTY.
ESTANISLAO FERNANDEZ.
FRANCISCO LAVIADA.
JOSE BARBE.

Mark—
JOSÉ A. CAJAS.

Don Antonio de Aldrey y Montolio, notary of the island of Porto Rico and general keeper of the protocols of the notarial district of Humacao, with residence and office open in this city, certify:

That the foregoing copy corresponds well and faithfully with the original of its contents kept in the archive- of this notarial office under my charge to which I refer.

In witness whereof and at the request of Doña Maria Rios, widow of Rubio, I issue the present first copy which I sign, mark and rubricate on three sheets of notarial paper of my use, affix-
855 ing thereto a stamp of fifty cents in accordance with the provisions of the "Bill Hollander" and taking note of its issuance in Humacao on the 26th day of May, 1905.

(Signed) ANTONIO DE ALDREY, *Notary.*

There is a notarial stamp.

There is a revenue stamp of fifty cents cancelled by the seal of the notary.

855½ Counsel for defendants objects to the introduction of this document on the ground that it is immaterial, too remote, and not tending to prove what it is offered to prove.

Overruled. Exception by Def'ts.

Complainant hereby offers in evidence the following receipts for rent paid by complainant to Doña Manuela Gutman for the property called "San José de las Mulas" for the purpose of establishing her occupation or possession under the said lease from Doña Manuela Gutman:

Receipts Dated:

January 7, 1901;
November 12, 1900;
January 10, 1902;
September 22, 1900;
June 30, 1900;
July 31, 1900;
November 30, 1900;
June 20, 1900;
January 21, 1900;
April 7, 1900;

August 28, 1899;
October 30, 1899;
October 17, 1900;
July 26, 1899;
September 30, 1899;
December 17, 1899;
November 26, 1899;
May 30, 1899;
April 30, 1899;
February 6, 1899;
January 26, 1899;
December 27, 1898;
November 11, 1897;
February 24, 1900;
June 24, 1899.

(Said receipts are herewith filed and marked "Exhibit R. for Complainant.")

856 EXHIBIT "R" FOR COMPLAINANT.

(Receipts.)

Received from Doña Maria Rios, widow of Rubio, the amount of one hundred and twenty dollars for the lease of the property "Mulas" corresponding from the first day of August to the last day of the same month.

Humacao, September 22, 1900.

(Signed)

M. G.,
Widow of Bustelo.

(2.)

Received from Doña Maria Rios, widow of Rubio, the amount of two hundred dollars current coin for the lease of the property "Mulas" corresponding to the month of June expiring on this date.

Humacao, June 30, 1900.

(Signed)

M. G.,
Widow of Bustelo.

(3.)

Received from Doña Maria Rios, widow of Rubio, the sum of two hundred dollars current coin for the lease of the property "Mulas" corresponding to the month of July expiring on this date.

Humacao, July 31, 1900.

(Signed)

M. G.,
Widow of Bustelo.

(4.)

Received from Doña Maria Rios, widow of Rubio, the sum of one hundred and twenty dollars in her representative capacity of the Succession of the latter for the lease of the property "Mulas" cor-

responding from the first day of November to the last day of the same month.

Humacao, November 30, 1900.

(Signed) M. G.,
Widow of Bustelo.

(5.)

Received from Doña Maria Rios, widow of Rubio, the sum of two hundred dollars current coin for the lease of the plantation "Mulas" corresponding from the first day of May to the last day of the same month.

Humacao, June 20, 1900.

(Signed) M. G.,
Widow of Bustelo.

857 (6.)

Received from Don Ricardo Rubio the sum of two hundred dollars special provincial coin for the lease of the plantation "Mulas" corresponding to the month of March, ultimo.

Humacao, April 7, 1900.

(Signed) M. G.,
Widow of Bustelo.

(7.)

Received from Don Ricardo Rubio the sum of two hundred dollars current coin for the lease of the plantation leased by said gentleman corresponding from the first day of January to the last; from said sum he shall discount ninety five dollars instead of sixty dollars fixed by the court as alimony for Doña Maria Rios de Rubio.

Humacao, January 27, 1900.

(Signed) M. G.,
Widow of Bustelo.

(8.)

Received from Doña Maria Rios, widow of Rubio, in her representative capacity of the Succession of the latter the sum of one hundred and twenty-five dollars for the lease of the plantation "Mulas" leased by her and corresponding from the first day of October to the last of the same month.

Humacao, November 12, 1900.

(Signed) M. G.,
Widow of Bustelo.

(9.)

Received from Doña Maria Rios, widow of Rubio, the sum of one hundred and twenty dollars for the lease of the plantation "Mulas" corresponding from the first day of December to the last day of the same month.

Humacao, January 7th, 1901.

(Signed) M. G.,
Widow of Bustelo.

(10.)

Received from Doña Maria Rios widow of Rubio the sum of fifty four dollars for the balance due from her on the lease of the plantation "Mulas" corresponding from the month of May to December, 1901.

San Juan, P. R., January 10, 1902.

(Signed)

M. G.,
Widow of Bustelo.

858

(11.)

Received from Don Ricardo Rubio two hundred dollars current provincial coin for the lease of the plantation "Mulas" corresponding to this month of June.

Humacao, June 24, 1899.

(Signed)

M. G.,
Widow of Bustelo.

(12.)

Received from Doña Maria Rios widow of Rubio, the sum of two hundred dollars special provincial coin for the lease of the plantation "Mulas" corresponding to the month of April.

Humacao, April 30, 1900.

(Signed)

M. G.,
Widow of Bustelo.

(13.)

Received from Don Ricardo Rubio the sum of two hundred dollars special provincial coin for the lease of the plantation "Mulas" corresponding to this month of February.

Humacao, February 24, 1900.

(Signed)

M. G.,
Widow of Bustelo.

(14.)

Received from Don Ricardo Rubio the sum of six hundred dollars current coin for the lease of the plantation "Mulas" corresponding to the months of August, September and October of this year 1897.

Santurce, November 11, 1897.

(Signed)

M. G.,
Widow of Bustelo.

(15.)

Received from Don Ricardo Rubio the sum of two hundred dollars current provincial coin, for the lease of the plantation "Mulas" corresponding to this month of December.

Humacao, December 27, 1898.

(Signed)

M. G.,
Widow of Bustelo.

(16.)

Received from Don Ricardo Rubio the sum of two hundred dollars special provincial current coin for the lease of the plantation "Mulas" corresponding to this month.

Humacao, January 26, 1899.

(Signed)

M. G.,
Widow of Bustelo.

859

(17.)

Received from Don Ricardo Rubio the sum of two hundred dollars provincial special current coin for the lease of the plantation "Mulas" corresponding to the present month of February.

Humacao, February 6, 1899.

(Signed)

M. G.,
Widow of Bustelo.

(18.)

Received from Don Ricardo Rubio the sum of two hundred dollars provincial special current coin for the lease of the plantation "Mulas" corresponding from the first day of March to the 31st day of the same month of March.

Humacao, March 1, 1899.

(Signed)

M. G.,
Widow of Bustelo.

(19.)

Received from Don Ricardo Rubio two hundred dollars provincial special current coin for the lease of the plantation "Mulas" corresponding to the present month of April.

Humacao, April 30, 1899.

(Signed)

M. G.,
Widow of Bustelo.

(20.)

Received from Don Ricardo Rubio the sum of two hundred dollars provincial special current coin for the lease of the plantation "Mulas" corresponding to the current month.

Humacao, May 30, 1899.

(Signed)

M. G.,
Widow of Bustelo.

(21.)

Received from Don Ricardo Rubio the sum of two hundred dollars provincial special current coin for the lease of the plantation "Mulas" corresponding to the month of November present.

Humacao, November 26, 1899.

(Signed)

M. G.,
Widow of Bustelo.

(22.)

Received from Don Ricardo Rubio the sum of two hundred dollars provincial special current coin for the lease of the plantation "Mulas" corresponding to this month.

Humacao, December 17, 1899.

(Signed) M. G.,
Widow of Bustelo.

(23.)

Received from Don Ricardo Rubio the sum of two hundred dollars provincial current coin for the lease of the plantation "Mulas" corresponding from the first day of September to the last day of the same month.

Humacao, September 30, 1899.

(Signed) M. G.,
Widow of Bustelo.

(24.)

Received from Don Ricaro Rubio the sum of two hundred dollars current coin for the lease of the plantation "Mulas" corresponding from the first day of July to the first of August; from the said sum he shall discount $85.42 corresponding to him as provisional support of Doña Maria Rios instead of $60. fixed by the court.

Humacao, July 26, 1899.

(Signed) M. G.,
Widow of Bustelo.

(25.)

Received from Doña Maria Rios widow of Rubio the sum of one hundred and twenty dollars for the plantation leased to her of the Succession Rios corresponding from the first day of September to the last day of said month.

Humacao, October 17, 1900.

(Signed) M. G.,
Widow of Bustelo.

(26.)

Received from Don Ricardo Rubio two hundred dollars provincial special current coin for the lease of the plantation "Mulas" corresponding from the first day of October to the 31st day of the same month.

Humacao, October 30, 1899.

(Signed) M. G.,
Widow of Bustelo.

(27.)

Received from Don Ricardo Rubio the sum of two hundred dollars current coin for the lease of the plantation "Mulas" corresponding to the current month of August.

Humacao, August 28, 1899.

(Signed) M. G.,
Widow of Bustelo.

861 DONA MARIA RIOS, complainant, re-called, having been duly sworn, testified as follows:

By Mr. HERNANDEZ:

Q. Please state your name?
A. María Rios, widow of Rubio.
Q. You are the complainant in this case?
A. Yes.
Q. You have already testified before this court, have you not?
A. Yes.
Q. Doña María, Mr. Argueso has testified under a commission that was issued to New York that on the night of January
862 16th, 1901 when he came to your house together with the other gentlemen the document which you signed there was read by him, and that you glanced over it and knew its contents: Please tell us whether that is true, and if not, please repeat again the circumstances showing the signing of that document?

A. I have already testified in the federal court that I have not read that document, that I signed that document because it was stated to me that it was the basis of a transaction which my sister had already signed.

Q. Did Mr. Argueso or anybody else read that document to you that night?

A. That same document?

Q. Yes.

A. Nobody read it; I signed it; they said to me that it was only the basis of a transaction.

Q. Who was it said that to you?

A. The two attorneys, Lopez Landrón and José María Cuadra.

Q. Who presented the document to you for your signature?

A. José María Cuadra; it was laid on the table for me to sign it.

Q. Where were you when they came into the parlor?

A. I was in the dining room with Patricio Algarín for whom I was figuring out an account of certain cattle which I had sold.

Q. And who called you out?

863 Counsel for defendants objects to this question and all subsequent questions in the line of this interrogatory on the ground that it is a mere repetition and a re-hash of the testimony heretofore taken by the complainant as part of the case in
864 chief. If this were proper testimony it would be proper for the defendants to produce all their witnesses and the case would never be concluded.

Overruled. Exception by Defendants.

A. Francisco Noya.

Q. Mr. Cuadra testified that prior to that night he went frequently to your house to consult you about this basis of settlement: Is that true or not?

A. That is not true, I have already stated that in the federal court. With regard to the transaction? I don't know anything about that; that was spoken of that same night that they called at my house.

Q. Did he ever speak to you before that night about this basis?

A. Never, never; he spoke to me when the testamentary proceedings were stated, that is, at the beginning of the testamentary proceedings.

Q. But at the beginning of the testamentary proceedings he spoke to you about those proceedings, did he?

A. Yes, with regard to the proceeding which was being judicially instituted.

Q. But never about this basis of settlement?

A. Never, no.

Q. Both Mr. Argueso and Lopez Landrón have testified that the only question you asked was whether a portion of forty acres of the plantation "San José de las Mulas" was to be reserved or not?

A. That is not true. Imagine that this forty acres of "Las Mulas" has been adjudicated to the Succession Bustelo and admitted
865 by my husband as it appears in a lease contract of "Las Mulas" plantation.

Q. Is it not a fact that long prior to that date—January sixteenth, 1901—you knew that this forty acres in the heart of the plantation "Las Mulas" had been purchased by the Succession Bustelo at a public auction and that therefore you did not have any reason to mention that portion of land?

Objected to on the ground that it is leading and argumentative.
Overruled. Exception by defendants.

A. Of course it may be seen that I had no reason why to mention it; my husband was my attorney in fact and that contract was entered into between my mother and my husband.

Q. I show you this document (handing document to witness) and ask you to look at it and state whether it is the document referred to by you?

A. (Examining document)—That is it.

Q. Whose signatures are those at the bottom?

A. My mother's and my husband's.

Q. What is the date of that document?

A. November 13th, 1897.

Q. Is it not a fact that you knew from that time that those forth acres of which Mr. Landron and Mr. Argueso spoke belonged to the Bustelos?

Same objection as last above.
Overruled. Exception by def'ts.

A. No, sir; they belonged to the Succession of Rios because they constituted a portion of lands——

Q. I don't think you understand my question: What I mean is that you knew that that portion of forty acres had been purchased by the Succession Bustelo?

866 Same objection as above.
Overruled.
Exception by Def'ts.

A. Yes, I knew it. Yes, sir.

Complainant here offers in evidence the original lease executed by Doña Manuela Gutman to Mr. Rubio, the husband of Doña Maria, of the plantation "Las Mulas" for the purpose of corroborating the statement of the witness that the forty acres mentioned were excluded from the lease because they belonged to the Succession Bustelo, and the same is herewith filed and marked "Exhibit S for Complainant."

867 EXHIBIT "S" FOR COMPLAINANT.

By this extra-judicial document Doña Manuela Gutman, widow of Bustelo, obligates herself in her representative capacity of the Succession Rios to lease to Don Ricardo Rubio of his own right and representative capacity the property named "Mulas" under the following conditions:

First. The duration of the lease shall be four years, which shall begin to count from the first day of December, 1897.

Second. The price of the lease shall be two hundred dollars current coin in this island at the time of making each payment provided that fifty dollars out of those two hundred belong to the Succession Bustelo who own a property composed of forty acres of level land in said property.

Third. The general taxes assessed upon the property during the time of the lease shall be paid by Don Ricardo Rubio.

Fourth. This contract shall be annulled three months after the approval by the parties in interest or by final judgment of the competent tribunal of the partition of the estate of Don José Rios y Berrios.

Fifth. During the time of the lease Don Ricardo Rubio may dispose of the property as if he were the owner of it, with the exception of the establishments and other factories set forth in an inventory, which shall only be sold with the consent of the parties constituting the Succession, each taking the amount corresponding to him in the sales which may be made.

Sixth. Don Ricardo Rubio obligates himself to pay in advance to Doña Manuela Gutman the first year, and thereafter he shall pay at the end of each month.

868 SANTURCE, *November 13th*, 1897.

Seventh. This contract shall be made a public deed as soon as either one of the contracting parties shall request it.

Dated as aforesaid.

(Signed) M. G.,
Widow of Bustelo.

(Signed) R. RUBIO.

868½ Q. Both Mr. Noya and Mr. Cuadra have testified that they requested you two or three days after the signing of this document to come to the notarial office of Aldrey for the purpose of signing the public deed; Please state whether that is true or not?

A. That is not true, because three or four days after the deed was signed for the basis of the transaction when Mr. José Maria Cuadra took to me the copy thereof I didn't see again either him or Mr. Francisco Noya.

Q. You have just spoken of a deed: Do you mean by that the basis of settlement?

A. I mean the basis of the contract, that extra-judicial document.

Q. After the signing of that document when was the first time that Mr. Cuadra went to your house?

869 A. Three or four days afterwards when he took the copy of it to me.

Q. Copy of what?

A. The copy of the basis of the transaction.

Q. Did he speak to you about going to the office of the notary Aldrey?

A. No, never; nobody has ever said anything to me.

Q. Mr. Landrón testified that that basis of settlement was a just one to you. Please tell us whether that is true or not, Doña María?

A. I cannot understand why it should be just to me. In what manner?

Q. When did you first find out the contents and the real purpose of that document?

A. I felt very happy on account of those bases because they meant the end of the lawsuit, but he said to me that those lands were to be adjudicated to my mother as of her own right and I was despondent because that was not what was said to me.

Q. When did he make that statement to you?

A. On the day he took the copy over to me.

Q. And the night that you signed it what did he tell you that it was?

A. That it was the basis of a transaction and that if either of the parties were not agreed to it they would tear it up.

Q. Did Mr. Cuadra explain to you before the signing of that document—of those bases—that by signing that document you were renouncing the rights that you claimed to the properties within the jurisdiction of Naguabo and that your mother would acquire the full dominion of them?

870 Counsel for defendants again objects to this line of questioning as being a mere repetition of the original examination of this witness on the stand.

Overruled.

Exception by Defendants.

A. He did not say that to me; if he had I would have never signed that document.

Q. Mr. Argueso has testified in New York that you were very happy over the signing of that document and that you knew its contents. Is that true or not?

A. Nothing of those statements were made that night because the only thing said or read that night was what I have stated here before.

Q. You were present here this morning during the testimony of Aldrey when he stated that he did not remember having been at your house a month and a half ago, and stating to you there that neither Doña Petronila nor Doña Manuela were at his notarial office on the eighteenth of January, 1901. State just what he told you at that time with regard to these facts?

A. He said here that a month and a half ago he called at my house.

Q. And what did he tell you at that time with regard to Doña Petronila and Doña Manuela being at his office?

A. He said on that occasion that inasmuch as in the federal court —that my mother and Petronila had been there, and I asked him if it was true that they had been at the notary's office and he said to me that neither my mother nor my sister had ever been there, and that he would say so the day he should be called to testify.

Q. Do you remember perfectly well that statement?

A. Perfectly well; it is only a few days since that time.

871 Q. Yesterday Paco Noya testified that he received the following letter from you. (The Examiner is requested to read to the witness the letter offered in evidence yesterday, and the same is accordingly read.) Please state what was the occasion of the writing of that letter?

A. Perhaps it was in reply to another one which he wrote to me which must be there.

Q. I show you a letter (handing letter to witness) signed by Paco Noya, and request you to state whether or not the letter introduced yesterday was in reply to that letter.

A. (Examining letter)—That is the letter.

Q. What was the occasion of Mr. Noya writing this letter to you?

A. Because at the time the cyclone visited this island we used to have a house on the outskirts of the town and of the debris each one of us was entitled to a portion thereof; they were selling the debris and I said to him that I wanted my share, and I asked him to send me my share of the debris because he was selling it; it was then that I wrote that letter to him because he had told me who it was—who the party that was selling that debris was.

Q. Do you recollect when you received this letter from him?

A. Perhaps it was in June or July, 1901. The debris was sold a long time after the cyclone; it was more or less in that year; the debris remained on the property after the cyclone.

Q. You received this letter after the cyclone?

A. Yes, of course, long after; it was during the days that the debris was being sold.

872 Q. Do you remember whether it was two or three months afterwards or six months?

A. Two or three months after the cyclone?

Q. Yes.

A. No, it was after I left the house of my mother, after the death of Ricardo; perhaps it was in 1900.

Q. In what part of 1900?

A. It was either in April, May, or June—it is such a long time since then; it is six years since that time, and I cannot recollect.

Complainant now offers in evidence the letter above referred to, and the same is herewith filed and marked "Exhibit T. for Complainant." To the introduction of which no objection is offered.

873 EXHIBIT "T" FOR COMPLAINANT.

Maria:

Really Pepita and I thought of calling on you yesterday but Pepita fell ill in the afternoon and we could not go. If you want to be informed of the debris matter send immediately your brother-in-law to see who is the one who is selling out everything. I cannot tell you anything about it. Your brother Manolo may inform you. In regard to the other matters you may go or your brother-in-law to speak about the other matters. "He who is in need must be active." I shall be pleased to receive you at my home but Pepita cannot go there because she is not feeling well. Send your brother-in-law immediately to the ruins and you shall see what is going on. I in order not to have any more difficulties have made up my mind not to interfere in any matter.

Yours, F. NOYA.

Q. The defendants have offered in evidence a deed executed by you to Don José Toro Rios on August 28th, 1904 referring to the partition of the property named "Braziles," for the purpose of showing your ratification of the private agreement or basis of settlement: Please explain from whom did you acquire this property?

Objected to on the ground that the written title is the best evidence of how the witness acquired the property.

Overruled.

Exception by Defendants.

A. That has nothing to do with the lawsuit nor what is being claimed; that property was acquired as an inheritance from my grandmother, which has nothing to do with the properties; that is protocolized and is adjudicated to each party as it appears in the document; this property has been divided ten or fifteen years
874 ago and has nothing to do with the case as an inheritance of the grandmother about which nobody is litigating.

Counsel for defendants moves to strike out the foregoing answer because the answer itself shows that it is a recorded title by inheritance if the answer is true, and therefore that title would be the best evidence.

Denied.

Exception by Def'ts.

Q. Did your grandmother die after your father?

A. Yes, sir, in 1882, and my father died in 1875.

Q. So that you inherited this property directly from your grandmother?

Same objection as last above.
Overruled.
Exception by Def'ts.

A. Yes, sir.

Cross-examination by Mr. PETTINGILL:

Q. How do you know after so many years from the cyclone that the letter from you to Paco Noya just read to you was in answer to this particular letter that you have just produced?

A. Why should I not know?—Since I haven't written anything to him except some notes concerning the same matter.

Q. Since the time of the sale of the relics of the house you have written him no note at all?

A. Most assuredly no, unless it is a little note claiming some lumber or things of that kind, concerning the same matter.

Q. At the time of the signing of this private contract on the sixteenth of January, 1901 were not the relations between you
875 and Francisco Noya entirely friendly?

A. I had very limited relations with him during that time; it was when the testamentary proceedings were being instituted.

Q. Well, didn't they continue up to the time of the settlement?

A. Up to the transaction, after which I didn't see him nor anybody else.

Q. And you want us to understand that after the night when the settlement was signed you saw neither Noya nor Cuadra except the one time when Cuadra brought to you the copy of the settlement?

A. I have never said that I saw Paco Noya when José Maria Cuadra brought to me the copy of the transaction.

Q. I didn't say that you did either. (Examiner here repeated the last question to the witness.)

A. Yes, I say that.

Q. Now what became of that copy delivered to you by Señor Cuadra?

A. I turned it over to Mr. Juan Vias.

Q. How long after?

A. Of his delivering it to me?

Q. Of its delivery to you?

A. It must have been when I looked to Mr. Juan Vias to defend me.

Q. Whose handwriting was that copy in?

A. I can't remember that.

Q. You know Cuadra's writing well?

876 A. I don't know it very well because I have seen very few documents written by him.

Q. Don't you know whether that copy was in his handwriting?

A. No, that I cannot say; I know it is a copy but I don't know if it is written by anybody particularly.

Q. I understood you to say that you were fully aware of the forty acre tract in the center of the "Las Mulas" having been sold to the Bustelos?

A. Not to Bustelo, to the heirs; Bustelo had already died at that time.

Q. Didn't you testify in San Juan that your husband always carried on your business for you and that you didn't know anything about it?

A. Yes, of course, it is very natural.

Q. Then how did you happen to know this particular thing—the sale of the forty acres to the Succession of Bustelo?

A. But, sir, a thing that has happened right in my own house that I hear everybody talk about! How am I not going to hear about it?

Q. Then your husband talked about your business matters to you, consulting with you about them?

A. No, sir, he didn't consult me for anything; he was a very intelligent man and didn't have to consult me about anything at all.

Q. What did he tell you about?

A. Like everything that is heared in a house when one is living in a family.

Q. Then had he never told you about the rights which you had in your father's estate?

A. I know that I have an inheritance in connection with
877 that and that he since he married me was claiming that.

Q. What was he claiming—did he tell you what it was he was claiming?

A. What he said to me was "the inheritance of my father."

Q. But he didn't tell you if it was one-half, one quarter, or what it was?

A. Just the legal inheritance that belonged to me and nothing more.

Q. And you testified before the court, did you not, that you did not know how much that was?

A. I made so many statements how can I remember that?

Q. I remember it, why shouldn't you?

A. I have so many things—how do you want me to remember just a word like that?

Q. Well, if you did testify that, it was true, was it not?

A. What is that?

Q. That you did not know how much you inherited from your father?

A. It was very difficult to know what I inherited from my father.

Q. Even the lawyers didn't know, did they?

A. Of course the attorneys having in their possession the documents knew what remained to me of the inheritance, that was left to me of the inheritance.

878 Q. The lawyers were not agreed among themselves as to how much you inherited?

A. Why shouldn't they agree among themselves?—That is what I can't understand.

Q. Is it not a fact that your husband, on your behalf, and afterwards yourself, always claimed that that forty acres was wrongfully sold to Bustelo and that they did not really own that?

A. I don't know anything about that; I have never made any claim before the court as to that.

Q. Didn't you always claim that your mo[illegible] allowed that to be sold when she had plenty of money on hand out of which she should have paid the claim for which it was sold?

879 A. I don't remember ever having said that.

Q. You don't know what your lawyers have said for you in court, do you?

A. *Do*, sir, I don't know.

Q. And that part of it though, they never advised you about that?

A. I have never talked with them in regard to those forty acres—or I don't remember; so many things have happened, how do you want me to remember everything? I am not the only one that fails to remember things.

Witness excused.

EULALIO LOPEZ, witness called on behalf of complainant, having been duly sworn, testified as follows:

Direct examination by Mr. HERNANDEZ:

Q. What is your name?

A. Eulalio Lopez.

Q. Where do you live?

A. Punta Santiago.

Q. What is your occupation?

880 A. Farmer.

Q. How long have you been living in Punta Santiago?

A. Approximately eleven years.

Q. When did you move to Punta Santiago?

A. In 1892.

Q. Where did you live in 1892?

A. I lived before in the house of Mrs. Manuela Gutman.

Q. How long have you lived in the house of Doña Manuela Gutman?

A. For a period of four or five years.

Q. Have you been "mayordomo" of the plantation "Mulas?"

A. Yes, sir, since 1888-1890, I was "mayordomo," of the "Las Mulas" plantation.

Q. Do you know if Doña Petronila Rios had any cattle there?

A. I know she had cattle there.

Q. How much cattle did she have there?

881 A. I don't remember the number of head she had; I remember that the value of the cattle contained there was seven or eight hundred dollars.

Q. Did that cattle all belong to her or did part belong to Doña Manuela?

A. It belonged to both.

Q. Do you know how much she realized from the sale of that cattle?

A. I know that they sold it shortly after they purchased it.

Q. How much did it bring at the sale?

A. It was a little more than nine hundred dollars.

Q. You mean provincial pesos?
A. At that time there was Mexican currency? Yes, Mexican currency.
Q. Did she have any other cattle there outside of that which was sold at that time?
A. No, sir, she didn't have any more.
Q. That money, that amount of nine hundred pesos—did that belong to her entirely or also to her mother?
A. It belonged to both.
Q. She has not had any other cattle at the plantation than that you have just mentioned?
A. No, sir.
Mr. PETTINGILL: Have you known anything about the "Mulas" since 1890—have you been there in charge of it or had any particular knowledge of it?
A. No, sir.

Witness excused.

882 Counsel for complainant here offers in evidence the original basis of transaction or private agreement which form pages 11 and 12 of the expediente of dominion under the custody of the Clerk of the District Court of Humacao, for the purpose of showing the different kinds of ink used by Doña Maria in her signature and the witness Jesus Almiroty in his signature, to contradict the statements of Cuadra and Francisco Noya to the effect that Almiroty signed this document at her house at the same time she did. Which is herewith admitted without objection and marked "Exhibit V. for Complainant."
(For Exhibit "V" see Exhibit "B" for the Complainant.)

883 ANTONIO ROIG, witness called on behalf of complainant, having been duly sworn, testified as follows:

Direct examination by Mr. HERNANDEZ:

Q. Please state your name?
A. Antonio Roig.
Q. And your occupation?
A. I am a merchant.
Q. Where do you live?
A. In Humacao.
Q. How long have you lived there?
A. Since 1898.
Q. Do you have a business office in Humacao?
A. Yes, sir, since that time.
Q. Do you also own a central?
A. Yes.
Q. Do you remember having employed in your office in Humacao Mr. Francisco Noya?
A. Yes.
Q. Please state in what years?

A. From about 1893 to 1897.
Q. From 1893 to 1897?
A. Yes, three years.
Q. Three years more or less?
A. Yes.

Q. Please state what kind of position he did occupy there?
884 A. He was about a third clerk; I took three clerks, he was the third, I mean last.

Q. What salary was he getting?
A. Twenty-five dollars more or less.
Q. Per month?
A. Per month.
Q. Is that the only time that you had Mr. Francisco Noya employed in your office?
A. That is the only time.
Q. And that is the only salary that he earned at your office in your employ?
A. I can't exactly say that because I used to pay my clerks all together, you know, and I had another fellow there, and I have found in my books that I gave once to them both fifty dollars, that is the fifty dollars were divided between the two.
Q. You mean to say you made them a present of fifty dollars?
A. They were second-class clerks and the cashier used to give them advances which he noted in the little slips and at the end of the month he used to charge them all together and say "General expenses, paid for Chuchi and Paco"—Chuchi was the son of
885 Francisco Virella—and he entered the charge of fifty dollars for them both; I suppose it was divided.

Q. But you are positive that the salary was twenty-five dollars per month?
A. Yes, not any more than that anyhow.

Witness excused.

JUAN N. HERRERO, witness called on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. HERNANDEZ:

Q. What is your name?
A. Juan N. Herrero.
Q. What is your occupation?
A. At present I am Treasurer of the Municipality of Humacao.
Q. How long have you held that official position?
A. Since the tenth of January last.
Q. And prior to that time in what business were you engaged?
A. In purchasing and selling cattle.
Q. How long have you been engaged in the cattle business?
A. Approximately thirty-five years.

Q. In what district?
886 A. In the district of Humacao—residing in Humacao, but making purchases in differen towns.

Q. Have you made purchases in the district of Naguabo?
A. Yes, sir.
Q. Are you acquainted, by reason of your profession or business, with the price of cattle and the condition of the cattle business in Porto Rico in the last few years?
A. Yes.
Q. Please state whether or not the cattle business in Porto Rico from the American occupation up to the present time has been a flourishing one or not?
A. The cattle business during that time has had its ups and downs, but at no time has cattle been sold—steers—for less than $2.15, $2.20, up to $2.25 per 25 pounds.
Q. In 1901 and 1902, and in 1900, was there, or was there not, a great demand for cattle in Cuba from Porto Rico?
A. Yes, there was.
Q. Didn't the price of cattle during those years reach very high figures by reason of that demand for exportation?
A. That is a logical consequence; from the moment that purchases are made and stemaers come to Porto Rico from other countries to take cattle prices go up, naturally.
Q. Did nig sales for Cuba of cattle take place in 1901 and 1902?
A. I am acquainted with the shipments made from the ports of Humacao and Naguabo, comparatively.
Q. From those shipments made from the ports of Naguabo and Humacao would you say they were large or small?
A. I know one instance where one thousand heads of cattle
887 were shipped.
Q. Were there any other shipments of that kind during these years?
A. Some of 600 head, several, two or three.
Q. What was the highest price that cattle reached during those years, I mean here in this vicinity of Humacao and Naguabo?
A. With regard to that particular I am not able to give a positive answer for the reason that those are private and secret negotiations between the cattle-owner and the agents coming to the country to purchase cattle, and for that reason I am unable to know quotations, but prices that may me paid are known approximately from the price offered by the people having cattle to those making purchases.
Q. Were those prices, made to people having cattle, high?
A. Comparatively, yes; because from the moment that the orders for the purchase of cattle from Cuba are found out cattle owners of course being acquainted with the demand raise their prices in proportion.
Q. Were cattle sold at that time for $3.25 for twenty-five pounds?
A. The purchasers or the agents entrusted with the purchase of the shipment, from their prices I could not give you a categorical answer, but from the prices of those entrusted with the shipment the offers made here were $2.70 to $2.75 per 25 lbs.
888 Q. Is it not a fact that the cattle industry in Porto Rico has never been so prosperous as it was during that time?
A. Comparatively it was so, inasmuch as in years prior to the

American occupation the prices of cattle were kept up comparatively because the larger part of the cattle shipped were sent to the English Islands, West Indies and Colonies.

Q. Please state what has been the most important and most productive industry in agriculture in this district before 1903 when the price of sugar took a great increase?

A. The cattle industry in the eastern part of the island has always been of great importance, inasmuch as the cattle-holders on a large scale have conducted their transactions at a good profit cattle owners have always been conducting their transactions without loss, and it has been observed that their capital has increased.

Q. By reason of your experience in the cattle business do you know what kind of land has been dedicated to the fattening and raising of cattle in this vicinity?

A. In the district of Humacao during the last years in view of the depreciation in sugar most of the business of the plantations went down or was reduced and the cattle industry went up, such as that of Mr. Toro, Faura, Lopez Brothers, and others, on a smaller scale.

Q. When you speak of the depreciation of sugar within the last few years, to what years do you refer?

A. When I spoke of the depreciation of sugar I referred, in the first place, to the year 1883, when the price of that staple went
889 down to $2.25 provincial currency, for which reason the prices in the following years continued relatively which brought about the destruction of my own plantation, which business was changed for the cattle industry up to last year in which cane obtained a better price, in which the sugar industry has obtained an increase owing to the increase in the prices offered.

Q. Did the cattle industry continue to flourish from the time that the sugar industry went down in 1883?

A. It went up and has had its ups and dosn- according to the demand made from the interior, but it was always considered as a magnificent business, because the cattle industry consists in good pasture land, and on that account the weight of the cattle is increased every month.

Q. What is the average increase in weights in cattle in the jurisdiction of Naguabo per month?

A. That depends on the class of the pasture where the cattle graze, but experience has shown that first class pasture land is considered to give an increase from sixteen to twenty-five pounds per month, but in order to obtain that result it must be borne in mind that the cattle put in the pasture for fattening purposes should be lean or thin, because after the cattle has fattened up somewhat the
890 increase in weight is somewhat reduced.

Q. Are you acquainted with the lands of the estate of Don José María Rios within the jurisdiction of Naguabo?

A. I know that property which has several names by reason of the fact that he preserved the names of the land after he purchased from different owners.

Q. How long have you known that property?

A. Since the year 1870.

Q. How many acres, more or less, did that property contain?

A. I have heard on the death of Don José María Rios upon a survey being made of the place it was said that there approximately one thousand acres.

Q. Do you know of your own knowledge or from Doña Manuela or Don José Rios the number of acres that that property contained?

A. Categorically, no.

Q. And more or less?

A. I cannot give a positive answer; I only know that Don José María Rios, in conversations during his life said that he had a thousand acres of land for each child and two hundred thousand dollars.

Q. Do you know the property purchased by Garzot & Fuertes in 1902 which was formerly a part of this property of Don José María Rios?

A. I have recently, in the month of January, passed through there and was able to observe the portion of land that was sold to Messrs. Garzot & Fuertes; according to public rumors it is three hundred and fifty acres.

Q. Please state to what purpose that property is now dedicated?

891 A. A portion of it to the raising of sugar cane and another portion of it, most of it, to cattle.

Q. What kind of land is it for pasture?

A. The lands are of the first class both for pasture and for sugar cane, owing to the fertility of the land owing to the fact that the river runs through it; the floods of the river favor that portion of it which is dedicated to pasture, and as for cane, inasmuch as those are lands which I have never seen devoted to anything except pasture up to the present time, I was able to see, to appreciate, on passing by there, the fine growth of sugar cane which was in proportion to the land.

Q. Is the fact that that property of Garzot & Fuertes is crossed by the river advantageous to it by reason of being dedicated to cattle?

A. It is advantageous for the pasture and of course advantageous for any other crop that it might be devoted to.

Q. Does the fact that the property contains certain lagoons depreciate it in value in any way?

A. I have seen and gone through all the finca; there is on it a sort of lagoon on that part of it which is called "Maizales" which bounds with a sort of brook or rivulet; the other part of the plane land when the river floods during the first days the lands becomes pretty damp but I had never seen that cattle had ever suffered for that reason.

Q. Why do not cattle suffer by reason of the floods or by reason of the lagoon?

A. Because inasmuch as that is a cattle that is accustomed to the place it develops pretty well, and afterwards, although it be
892 from three to four days somewhat uncomfortable for the purposes of feeding themselves or grazing, inasmuch as the

land has the advantage of having its water empty into the river again it is easily dried up, the cattle continues eating well, and that is why you can see that it does not lose in merits.

Q. How does the land of Garzot & Fuertes compare with the very best pasture lands in Naguabo?

A. The property of Rios—known as "Rios"—has always been the most select for grazing cattle.

Q. By the "property Rios" what do you mean?—What do you include?

A. The one thousand acres which, after he became the owner of it, has always been known as the "Finca Rios."

Q. By reason of your experience in the cattle business have you always been acquainted with the value of lands dedicated to cattle in that vicinity?

Counsel for defendants objects to this question and further questions upon the same line on the ground that it is not proper rebuttal testimony, but could only have been properly offered as part of the plaintiff's case in chief.

Overuled.

Exception by Defendants.

Mr. HERNANDEZ: Complainant offers this testimony to contradict the testimony of seven or eight witnesses introduced by the defendants for the purpose of showing the value of the property of Garzot & Fuertes.

Counsel for defendants objects to the question for the further reason that the value of the land in controversy is already stipulated and alleged in the complainant's bill of complaint, which values have not been disputed by the defendants.

Overruled.

Exception by Def'ts.

893 Q. (Last question on last page—260—repeated to the witness.)

A. By reason of having been connected, owing to cattle transactions, with important people of the vicinity, and by reason of the public statements made at the death of any of those persons of high standing, by the amount bequeathed by them, by the numerous sales of land often made, the price or value of the properties is almost known in its entirety; and that same experience was perhaps the cause for the insular government appointing me assessor when the new taxation law was inaugurated by the insular government, and as such official of the government I was under the obligation to appraise that land around Humacao, and for those circumstances I was able to appreciate the cattle lands of Mrs. Petronila Rios, Faura Brothers, Lopez Brothers, Luis de Celis, Don Ramón Pou y Rios, appraising land of some of them at sixty dollars. From this point of view and considering the lands of the estate at Naguabo much superior to those of this locality I consider that those lands can and ought to be considered thirty per cent. above the appraised value of the property of Humacao.

Counsel moves to strike out the forgoing answer upon the ground that the same is not responsive to the question.

Overruled.

Exception by Def'ts.

A. Have you or have you not assessed cattle properties within the jurisdictions of Naguabo and Humacao?

A. I was appointed by the doctor at Juncos, Mr. Almodova, to appraise the cattle which existed at a property at Naguabo in charge of which was Mrs. Manuela Gutman for Mr. Almodova to purchase it inasmuch as Mrs. Manuela Gutman had leased the aforesaid property to the said Mr. Almodova which was leased for eight
894 thousand dollars per annum; it appearing therefore that eight thousand dollars per annum was equivalent to eight dollars per acre for the one thousand acres, per month.

Q. I think you are mistaken when you say that eight thousand dollars for one thousand acres per year is equivalent to eight dollars per acre per month. Think it over and see whether it is not eight dollars per acre per year. Is it not so?

A. Yes, it is per annum, of course; eight dollars per annum, of course.

Q. What, in your opinion, was this property of Garzot & Fuertes worth in 1901-1902 per acre?

A. The same that it might have been worth before and that it is worth to-day, because the quality of the land has never depreciated.

Q. How much was that?

A. As I said before, considering that increase of thirty per cent., lands adaptable to any kind of business may,—at least I myself would not sell them for less than one hundred dollars.

Q. What, in your opinion as an assessor, was a fair price, a fair valuation of that property per acre in 1902?

A. Of course the same assessment that I would give if the land was my own I would give for any other property giving an honest and true valuation, and that would be one hundred dollars
895 per acre.

Q. Is it not a fact that in 1901 and 1902 there were projects for the establishment of a central in that district?

A. In Naguabo. I know because it is on the road from Naguabo to the Playa and I have seen a sort of a road purchased by Mr. Bass, and when he built a road-bed for a railroad track and afterwards it was publicly known that the project would not be carried out because several gentlemen of Naguabo put obstacles to the project.

Q. Did the fact of such undertaking influence the valuation of property?

A. I cannot testify categorically but common reason tells you that a central in a town of course constitutes an improvement, a sign of progress for the town, and of course it means an increase in the price or value of property.

Q. Supposing that in 1902 three hundred and fifty acres
896 of land formerly belonging to the Succession Rios were purchased for fifteen thousand seven hundred and fifty dollars,

of which nine thousand dollars were paid in cash and the balance on installments within one year: Do you consider that a fair, a low, or a high price?

A. The price, in my judgment, is extremely low, because having arrived at a conclusion from the assessment I have made of the property I could not, therefore, consider it otherwise.

Q. Are you acquainted with the plantation "San José de las Mulas" in the district of Humacao?

A. Yes, sir.

Q. Are you acquainted with its quality and value?

A. I know it perfectly well owing to the frequency that I have gone through it and for the direct relations or dealings with its owners and lessees.

Q. How does that land compare with the properties of the Succession Rios in Naguabo?

A. The immense lands of which the "Mulas" plantation is composed, approximately sixteen hundred acres, are divided into several classes; a great deal of it is hilly land; there is quite a good deal of it forest land; it has a portion of wet pasture land, owing to having previously been forest land, and another portion also of importance, plane and semi-plane, which cannot in any way be considered the same as those as the plantation of Naguabo, because the lands of Naguabo are almost in their entirety plane lands with the exception of that portion known as "Maizales," and another portion which I don't know whether it belongs to "Las Mulas," I think it does,
897 which bounds with the jurisdiction of Naguabo, and of course the lands of "Las Mulas" plantation have to be considered at least sixty per cent. in comparison with its entire area. While I was a member of the City Council of this town——

Q. Well, never mind about that. What, in your opinion, is a fair valuation per acre of the land of the plantation "Mulas" in 1901-1902?

A. The acre of "Las Mulas" in 1901 was worth the same or somewhat less than it is worth to-day for the simple reason that at present plans are made for the installation of a central at "Pasto Viejo" of Mr. Roig, and inasmuch as the "Las Mulas" plantation bounds with "Pasto Viejo" of course the price of that land will be worth more than to-day and more than at that time.

Q. Then, what was, in your opinion, the value per acre, the average value per acre, of the plantation "Las Mulas" in the year 1901?

A. If I am not mistaken, as assessor of property——

Counsel for defendants requests the Examiner to stop the wanderings of the witness and confine him to the questions that are asked.

Q. (Last question above read to the witness.)

A. I appraise a portion of those lands at fifty dollars; portions of them at twenty-five; a portion of forest land at ten dollars.

Q. Then, in your opinion, that was a fair valuation of the plantation "Las Mulas" in 1901—the one you have just given?

A. Yes, sir.

Q. Do you remember a public sale of part of that plantation having taken place at that time?

898 A. If I am not mistaken at "Las Mulas" there have been two public auctions for the payment of the taxes on said lands of Mr. Bustelo, and another recently for the payment of expenses in lawsuits as is publicly said.

Q. Which, in your opinion, is more productive, "San José de las Mulas" or the properties belonging to the Succession Rios within the district of Naguabo?

A. The property at Naguabo yields more than the whole "Mulas" plantation both in the sugar business and in the cattle business.

Cross-examination by Mr. PETTINGILL:

Q. Now you said first that the value of those three hundred and fifty acres is the same now as it was in 1901 and 1902 and as it was twenty years ago; and then you said that the coming of the central had increased the value. Now which proposition is correct? Which one do you want to stand by? That the value of land is always fixed by its quality which always remains the same, or is it regulated by circumstances which change from time to time?

899 A. I have said that the lands, if the central is erected of course will increase in value, but if the central is not constructed of course the land may be considered with its intrinsic value.

Q. Then, in your opinion, as I understand, this land has not yet increased in value on account of the central because the central is not erected?

A. Of course.

Q. You have spoken of the shipment of cattle to Cuba; in what years did those shipments take place?

A. Inasmuch as I was not directly concerned in the dealings neither as an interested party nor as an agent I cannot have a memorandum of the transaction or an entry made in my books of the fact.

Q. You don't remember, do you, during what years it continued?

A. One was made last year.

Q. I am not speaking about any particular transaction. I understood you to testify that during several years there was a general movement of cattle to Cuba from here; now what years were those?

A. I don't bear in mind; I know it was from 1901 to the present time there have been two or three of such ones in which I have been interested; I have purchased cattle and I have sold also.

Q. What kind of cattle were shipped to Cuba when any were shipped?

900 A. Steers, heifers, cows—all kinds of cattle.

Q. Do you mean to say that they shipped old cattle over there, full grown, old cattle?

A. The steers, most of them, of course, but the rest or balance of the cattle such as cows and heifers; they may be engaged in the cattle business over there, I can't tell you about that.

Q. Did they ship any male cattle, to any extent, to Cuba? Were they not all females for breeding purposes?

A. I can't give you a positive answer.

Q. Now you know a good deal about this three hundred and fifty acres. Do you know whether that is customarily used for young cattle or for fully grown male cattle?

A. I cannot give you an opinion because I am neither manager nor administrator of the finca, as I simply pass by there and I cannot at a glance get an opinion as to the cattle grazing there on account of the properties being adjoining another and not knowing how to identify one from the other.

Q. Do you know enough about the property to know whether it is more suitable for pasture for young cattle or fully grown cattle?

A. With respect to the three hundred and fifty acres or to the whole finca?

Q. We are only interested in the three hundred and fifty acres?

A. Well, that property is good for everything, according to the importance of the industry that it is desired to be developed therein.

Q. You don't think that young heifers would be likely to
901 be caught by rises of the river and washed out to sea and drowned, do you?

A. I cannot give you a positive or categorical reply to the question because the boundary lines of that property I do not know perfectly well.

Q. I believe you have already stated that you did not know the boundaries of this three hundred and fifty acres?——

A. ——But I have not finished my reply: I don't know the boundary lines of the 350 acres, but the whole of the property as it always existed—the wet part thereof known as "Los Puentes" was devoted to the raising of loose cattle both male and female the same as the enclosure known as "Maizales," the high one, and the whole of the plane land was devoted to large cattle for fattening purposes which grazed tied up to posts.

Q. Have you finished now?

A. Yes, sir.

Q. To whom does this "Los Puentes" belong, to which you have referred?

A. I don't know, inasmuch as "Los Puentes" is composed of a tract of land I don't know which portion of it has been sold.

Q. Do you know to whom any part of it belongs now?

A. It was publicly rumored that a portion of it was sold to Garzot & Fuertes.

Q. Now what part of this three hundred and fifty acres has the sugar cane on it; is it in the center or on one side, to the north, south, east, or west?

A. Going from Naguabo to Rio Blanco I was able to see
902 that on both sides of the road an extension of land is planted in cane without being able to judge or appreciate the number of acres which may belong to one person or another, inasmuch as I have learned that Mr. Preston has some cane around there, and not knowing, as I do not know, the real boundary lines of the three hundred and fifty acres, I cannot give an opinion as to the situation of the cane as I have been asked to do.

Q. Then you do not know, as a matter of fact, whether there is any cane on this particular three hundred and fifty acres?

A. I affirm that there is cane there; rather I saw it in January; I have not passed by there lately.

Q. You cannot tell in what part of the tract, whether it is on the center or on the side?

A. No, sir; in January when I passed by there there was a part of that property planted in cane.

Q. You were passing along the road?

A. Yes, sir.

Q. And this cane that was on the 350 acres was along the side of the road?

A. Yes, sir. There was an extension of cane on both sides of the road going towards the plane and in the direction of the hills.

Q. Then this road goes through this three hundred and fifty acres?

A. There is a road from Naguabo to Rio Blanco, it is a regular road, a first-class road.

Q. I asked you if that road passed through this three hundred and fifty acres?

903 A. Not knowing the boundary lines I cannot tell you.

Q. Then how do you know that you saw any cane on this three hundred and fifty acres?

A. Because I have knowledge of the portion—of the sale of this three hundred and fifty acres to Garzot & Fuertes, because in passing by there in company with Mr Emilio Cuadra Mr. Cuadra called my attention to the large growth of the sugar canes of Mr. Fuertes.

Q. Don't you think Mr. Fuertes has any cane except on those three hundred and fifty acres?

A. I don't know.

Q. Then you could not even tell from talking with Mr. Cuadra whether that was the three hundred and fifty acres or not?

A. Mr. Cuadra called my attention to the land and said to me "Now these canes belong to Mr. Fuertes, look how handsome they look!" But as neither Mr. Cuadra nor myself know the boundary lines of the three hundred and fifty acres of course we cannot locate the sugar cane; and having also observed that at the point where the sugar cane stops there were cattle grazing.

Q. Is Mr. Fuertes the only man that owns cattle over in that country? In that district, is he the only owner of cattle?

A. No, sir. I know he has a large amount of cattle everywhere around that neighborhood.

Q. Are you a cattle man or a sugar man?

A. At present I am nothing; I am an employé.

Q. I mean, what does your experience qualify you to judge about, cattle or sugar?

904 A. About lands and about cattle.

Q. I believe you said you had been thirty-five years in the cattle business?

A. Yes, sir.

Q. And that it was a very prosperous business?

A. Of course, Mr. Fuertes ou-t to know that.

Q. Then how many thousands have you accumulated during those thirty-five years?

A. I don't keep a current account; I make transactions of purchases and sales.

Q. How much money have you made out of the cattle business in those thirty-five years? How much have you got left?

A. Everything that I have expended in supporting a very large family.

Q. Then the success of the cattle business depends somewhat on the man as well as on the lands, does it not?

A. Perfectly well, yes, sir, and particularly in the purchase of the cattle; the business depends a good deal on purchases of cattle, on purchasing from people who do not understand the business, and particularly in prior years when there were no scales neither for the purchase nor for the sale of cattle, when the weight of the cattle was just figured out, and it was here the real business was, in appreciating the weights of cattle in making the purchases and making the seller understand that the head of cattle did not weigh more than the purchaser would make it appear to show, and according to the necessities of the seller the purchase resulted more or less beneficial.

905 Q. And you were too honest for that business?

A. Of course I was. The proof of it is that I have no capital.

Q. In other words, you didn't succeed in the business?

A. I was successful for others as I was never guided to a great extent by interests but always by a desire to please. I can cite the case of the late husband of this lady Mrs. Maria Rios, present, for whom I often bought cattle and I never charged anything.

Q. Now as a man of intelligence at least, whether successful in business or not, do you not think that the value of a man's judgment about a business depends somewhat upon the success he has had in it?

A. In any enterprise depends, I think, not only upon the industry or business itself, but in one way upon the demands of the business, and in other cases when a man is kind, when his interest is not above everything else and he is not anxious to pile up money.

Redirect examination:

Q. Mr. Herrero, the defendants have tried to belittle you and destroy the force of your testimony by the fact that you have not been very successful in the cattle business. Now do you pretend to pose here as a millionaire or as a man who has the immense

906 wealth of Mr. Fuertes?

A. With regard to that matter I must reply that not every person who has become great from any working has made a fortune, the majority of them have failed; in order to acquire wealth it is necessary to have activity, an exact knowledge of the business, to have by one honest people, as in the case of Mr. Fuertes who has had his brother in the business, and to be able to study and to learn the personnel connected with the purchases to be made during the busi-

ness in order to get the most out of the business. And notwithstanding my failure in the work I consider myself as much or more honest than Mr. Fuertes and his attorney who has interrogated me.

Q. The fact that you have not been very successful in the business does not mean that you do not know the sanctity of an oath, does it?

A. Of course.

Q. You know perfectly well the punishment upon a man who does not tell the truth, don't you?

A. Of course I do.

Q. You know perfectly well the responsibility of a man who does not tell the truth, don't you?

A. Yes, sir.

Q. Do you swear in the name of an everlasting God that what you have said here is true, the whole truth and nothing but the truth?

907 A. Yes, sir.

Q. And you ratify all you have testified?

A. Yes, sir.

Recross-examination:

Q. Now you mean to say by your last statement that you cannot possibly be mistaken in any particular?

A. In everything that I have stated, if it has been put down justly as I have stated it—because there may be an error in the translation both from one language to the other.

Q. That does not answer the question?

A. I cannot give another.

Q. I asked you if you are not capable of making a mistake yourself?

A. Of course, like every man; but in matters of which one has a knowledge, and inasmuch as in this case there is involved the question of the appreciation of a certain thing, I will uphold before any other person whom may say to the contrary.

Q. That merely means that you have testified to the best of your judgment like any other witness?

A. Honestly.

Q. And you are no more free from mistakes than any other witness might be who is equally honest?

A. He might also have made a mistake and that is a question of appreciation as in the case of any lawsuit, one of the parties is not right because with rare exceptions there has been no case where the same question has been decided in favor of both parties, and that which presents the best proof has served as the basis for the

908 judge to render a verdict in a matter.

Q. Now let us take an example: You honestly think that this three hundred and fifty acres bounds on the road leading from Naguabo to the Rio Blanco—bounds on this "carretera" that you refer to, but in that you may be mistaken, may you not, not knowing the boundaries of the three hundred and fifty acres?

A. But I cannot make a mistake knowing as I do the whole prop-

erty, and with the exception of that high part known as "Maizales" and a portion of "Los Puentes" it has not a value that may be put to it for the present moment. Under the present circumstances that property is worth as much as may be asked for it.

Q. Let us have the question once more and see if you cannot answer it. (Last question above repeated to the witness?)

A. I may be mistaken as to the name given with regard to the boundaries of the three hundred and fifty acres, but I sustain that whatever its boundaries may be it is worth the one hundred dollars per acre and and that if it belonged to me at the present time I would not give it for that much.

Witness excused.

909 FRANCISCO PORRATA LLITERAS, witness called on behalf of complainant, having been duly sworn, testified as follows:

Direct examination by Mr. HERNANDEZ:

Q. Where do you live?

A. Humacao.

Q. What is your present occupation?

A. Clerk in the office of the Registrar of Property.

Q. How long have you been in the Registry of Property?

A. Five years.

Q. Were you in the Registry of Property in the months of June, July and August, 1902?

A. Yes, as substitute for the Registrar.

Q. You mean to say that during that time you were acting as Acting Registrar of Property?

A. Yes, through the absence of the Registrar who was in Spain.

Q. Do you recollect when you began to act as Acting Registrar of Property?

A. May 19th, 1902.

Q. As such acting registrar of property did you have occasion to inscribe upon the books of the Registry of Property a certain transfer made by Mr. Palmer to Mesrs. Garzot & Fuertes of three hundred and fifty acres of land, called "Cercado Ramirez"?

A. I made a transfer of a sale made by Mr. Palmer to Messrs. Garzot & Fuertes, but I cannot state the name of the estate nor the number of acres.

910 Q. Who took that deed to you?

A. I don't remember, some one presented it.

Q. Do you remember who presented it?

A. No, I cannot remember.

Q. Do you know whether it was Mr. Garzot or Mr. Fuertes or anybody else?

A. Neither one of those, neither Garzot nor Fuertes, a verbal agent of them.

Q. Do you remember did Mr. Garzot or Mr. Fuertes prior to the presentation of that deed ever ask you to examine the books of the Registry of Property to find out the status of that property?

A. I don't remember the date of the transfer, therefore I cannot state whether they went there before or afterwards.

Q. The sale was made by Palmer to Garzot & Fuertes of the "Cercado Ramirez" on the twenty-sixth of August, 1902 and was inscribed on September 2nd, 1902. For the purpose of refreshing your memory I present to you the copy of the deed inscribed in the Registry of Property, with the foot-note, and ask you to read it and see whether that is your handwriting or not?

A. (Examining paper handed to him.) Yes, that is my handwriting; that is the handwriting of the signature.

Q. Now can you state when it was inscribed?

A. On September 2nd, 1902.

Q. Do you remember if either Mr. Fuertes or Mr. Garzot prior to that date ever asked you to examine the books of the Registry of Property to examine the condition of the title of the land upon the record?

911 A. I think that Mr. Garzot was there.

Q. And what did he ask you to do?

A. He went there to study the history of the property.

Q. Do you remember the date?

A. I cannot state accurately the date.

Q. Do you know whether it was before or after that date?

A. I think it w . before this date.

Q. Was it after the deed had been presented in your office for its inscription?

A. I think it was before.

Q. Do you know if at the time that he came to the Registry of Property to ask you about that he had the deed in his hand?

A. He didn't have anything in his hands; he was in transit from San Juan to Naguabo.

Q. Do you know what month that was?

A. I cannot state, but I think it was between August and September.

Q. Can you state whether it was before or after the inscription of that deed?

A. Before the inscription of this deed.

Q. Do you know if it was before or after the presentation of the deed for its *in* inscription?

A. I cannot state whether it was after the presentation or before the inscription.

Q. Can you recollect whether it was in the month of September?

A. I cannot tell you, it was the latter part of the month, but I cannot tell you how many days it was.

Q. Did you personaly examine those books or did he do it?

912 A. The examination of the books was made by me, and I was telling him as I read everything that there was in regard to the finca.

Q. What books did you examine?

A. The book in which the property purchased by Garzot & Fuertes was inscribed; it appears, as I remember, that the first registration was in favor of Mrs. Manuela Gutman. No, I want to rectify: The

first inscription was in favor of Mrs. Avelina Faura y Rios; this inscription was cancelled by virtue of an expediente de dominio which was recorded in favor of Mrs. Manuela Gutman, in which the heirs of these ladies were summoned to appear; afterwards then came the inscription of Mr. Victor Burset by virtue of another deed of sale executed by Mrs. Manuela Gutman; afterwards came, I don't know whether it was a mortgage in favor of Mr. Guillermo Ygarrividez Landrón or a sale in favor of Mr. Santiago R. Palmer, and after that came the sale in favor of Garzot & Fuertes.

Q. Did you inform him of any claims having been made by Doña María to that property?

A. Through omission I did not inform him of it.

Q. Did you know of any?

A. Because she presented a petition in the Registry requesting the nullity of the several inscriptions and of a private contract, and I don't know what other things were requested in the order. This order was presented in the Registry in the month of May after the deed of sale from Mrs. Manuela in favor of Victor Burset.

913 Q. Is it not a fact that you advised Mr. Fuertes or Mr. Garzot not to purchase this property because it was in litigation?

A. I don't remember that.

Q. But can you swear that you did not advise him not to purchase it?

A. I didn't advise him to purchase.

Q. But did you advise him not to purchase it?

A. That I don't remember.

Q. Did you inform him of the entry made upon the Day-Book on folio 124, dated May 5th, 1902?

A. That entry refers to the order to which I have already referred, which order did not have any effect in the Registry, or in other words the nullity requested in the order was not entered in the Registry for the reason that I will now give you: When Mrs. Manuela Gutman sold to Mr. Victor Burset the deed was refused and her attorney Mr. Diaz Navarro appealed to the Supreme Court; the Supreme Court ordered the extension of the period of the presentation of the said deed; subsequently a certificate of the Secretary of the Supreme Court was presented in which the expediente de dominio was approved and order was given for the inscription in favor of Mrs. Manuela Gutman the finca or estate sold to Mr. Victor Burset. With the said notification was again presented the deed of sale to Mr. Victor Burset which was taken from the

914 records of the appeal taken before the Supreme Court; inasmuch as the period of presentation was in suspense the period of the presentation of the deed of sale had not expired and that deed was presented for the purpose of correcting the defects of the denial; then was first recorded the certificate in favor of Doña Manuela Gutman, and afterwards the sale in favor of Mr. Victor Burset.

Q. (Question last above repeated to the witness.)

A. Well, I was going to explain——

Q. All I want to know is "yes" or "no"?
A. No.
Q. Why didn't you?
A. For the following reasons: The certificates or the communication to which that inscription refers on page 124 of Volume 11 of the Journal, and by virtue of the sale made in favor of Mr. Victor Burset the note that was ordered to be made in the records of the finca of Mrs. Manuela Gutman was not recorded because this estate already belonged to Mr. Victor Burset and not to Mrs. Manuela Gutman.

915 Mr. HERNANDEZ: Complainant wants to lay the foundation to attack the credibility of this witness and to impeach him because he is a hostile witness.

Q. Did you or did you not tell Mr. Vias Ochoteco that neither Mr. Garzot or Mr. Fuertes requested you to examine the books of the Registry of Property until after the purchase had been made and the deed was registered in the books of the Registry?
A. I do not remember that.
Q. Did you yesterday afternoon tell Mr. Vias Ochoteco that neither Garzot nor Fuertes had examined the books of the Registry of Property nor requested you to examine them until after the purchase of this property had been made and the deed inscribed in the Registry of Property?
A. I spoke to Mr. Vias yesterday something regarding that particular, but I could not say that they had not been there inasmuch as Mr. Garzot—I cannot deny it—had been in the Registry; Mr. Fuertes was there after the inscription to pay the fees of said registration and to get the title.

916 Q. Is it not a fact that you told Mr. Vias Ochoteco that if called here to testify you would say that those gentlemen had not examined the books of the Registry of Property until after the inscription of that deed?

A. The only thing that I said to Mr. Vias was that I would always testify the truth; I cannot testify anything else, nor deny that Mr. Garzot went there to see the inscriptions.
Q. Didn't you tell Mr. Vias Ochoteco that because you did not show to Mr. Garzot this entry upon the Day-Book you had to testify that they had not been there until after the deed had been presented in the Registry of Property?
A. I have not said that to Mr. Vias. As an explanation I want to state that I myself pointed out to Don Juan in my conversation yesterday that that entry of presentation of that order existed, which fact he did not know.
Q. Is it not a fact that in a conversation that you had with your brother Jesus María Porrata you told him about a month ago in the city of Humacao that you had advised Garzot & Fuertes not to purchase this property and that you received a telegram from one of them disregarding your advice?
A. I have had with my brother a good many conversations regarding this lawsuit but I have never touched that point with him.

Q. Don't you remember that particular conversation about your having received a telegram from either Garzot or Fuertes disregarding the advise you gave them? And I request you to answer the question "Yes" or "no"?

A. I have not received any telegram from them.

917 Q. You are an intelligent witness and I want you to answer that question categorically, "yes" or "no" without evading it and testify whether or not you told your brother that you had advised Garzot & Fuertes not to purchase this property and that you received a telegram from them disregarding your advice?

A. That question cannot be categorically replied to; I would have to be expansive.

Q. Answer "yes" or "no" and then make the explanation that you desire?

A. Can you repeat to me the question again?

Q. (Question last above read to the witness.)

A. I have not said anything to my brother nor have I ever received such telegram.

Q. Didn't you about a month ago telegraph to your brother at San Juan in reply to a telegram that you received from him asking about this advice and the telegram sent to you by Mr. Fuertes, and state to him that you had received such telegram after the purchase of the property had been made?

A. I do not remember that. Mr. Fuertes has never sent me any telegram.

Cross examination by Mr. PETTINGILL:

Mr. Porrata, I have only one question: Will it not appear from the books of the Registry who presented the deed from
918 Palmer to Garzot & Fuertes for registration?

A. Yes.

Q. I want you to look at that entry during the noon recess and return to state at the afternoon session, after refreshing your memory from the entry, who did, in fact, present the deed for registry and signed the book stating that he had so presented it?

A. You mean to say the party who presented the deed?

Q. Yes.

Afternoon Session.

Mr. PORRATA called to reply to last question propounded.

Q. Upon examining your books what do you find?

A. At one o'clock on the seventeenth of August, 1902, Mr. Faustino R. Fuertes presented a deed executed at San Juan before the notary Diaz Navarro by virtue of which a mortgage on several properties was cancelled and sale was made to Garzot & Fuertes of one of the properties free from incumbrances named "Cercardo Ramirez," for the price of fifteen thousand seven hundred and fifty dollars, which were paid in the following manner:——

Mr. PETTINGILL: Never mind that.

Redirect examination:

Q. You testified that you informed Mr. Garzot of the contents of the inscription of the "Cercado Ramirez." Did you inform him of the fact that it appeared upon said inscription that this property had ben acquired by Doña Manuela Gutman by private settlement and that it was one of the properties inherited from her deceased
919 son José Rios y Gutman, brother of Doña María?

A. I informed him in accordance with what appears from the Registrar's books.

A. It seems to me that I have testified that I informed Mr. Garzot of everything concerning the history of the finca named "Cercado Ramirez." I do not know by heart the contents of the inscriptions. Mr. Hernandez has in his hands a certificate made by me in which it is stated literally the said inscriptions; he can see by them the form in which Mrs. Manuela acquired it.

Q. You are sure that you informed Garzot of all the contents appearing upon the inscriptions contained in the certificate which I hold in my hands which is marked "Exhibit K, for the Complainant?" Are you sure?

A. I am sure that I read to him literally each one of the inscriptions in the Registry.

Counsel for complainant here offers in evidence a certificate issued by the Registrar of Property of Humacao containing the entry made upon Book 11 of the Day-Book, Folio 124, to contradict the statement of Mr. Fuertes that he examined the books of the Registry and found nothing showing any claims alleged by the complainant herein in regard to the "Cercado Ramirez" prior to the month of August, 1902; this certificate containing the entry of the presentation made in the Registry of Property of the *lis pendens*
920 filed there by Mr. Vias Ochoteco on behalf of Doña Maria Rios alleging the nullity of the private agreement and dominion title and referring specifically, among other things, to the "Cercado Ramirez," which presentation was made on the 5th of May, 1902, and the same is herewith filed and marked "Exhibit U, for Complainant."

921 EXHIBIT "U," FOR COMPLAINANT.

To the Registrar of Property of Humacao:

Juan F. Vias Ochoteco, lawyer, in the name of Doña Maria Rios, widow of Rubio, requests a literal certified copy of the entry of presentation No. 327 appearing on folio 124 over of Volume 11 of the Day-Book, referring to the presentation of an order of this district court by virtue whereof it was ordered to make a marginal note on the entries of inscription of several properties, and among them one named "Cercado Ramirez" of the pendency of a suit for the annullment of a private contract of transaction and an expediente de dominion and of the transfers made of certain properties including said "Cercado Ramirez," and which suit was instituted by

Doña Maria Rios widow of Rubio against her mother Doña Manuela Gutman and her sister Petronila Patricia Rios de Noya.

Please issue immediately following the requested certificate.

Humacao, July 12th, 1905.

Yours truly, JUAN F. VIAS, *Lawyer.*

There is a seal of the Registry of Property.

I, José R. Aponte, Fiscal of this District and Acting Registry of Property by reason of the temporary withdrawal of Don José María Cuadra y Rosa, certify:

That in conformity with the request made in the foregoing petition, and having examined Volume 11 of the Day Book of transactions of this office, it appears that on Folio 124 thereof, over, there is an entry of presentation numbered 327, which literally reads as follows: "327.—Don Fernando Hernandez of this vicinity by oral request of Don Tomas Bernardini de la Huerta, lawyer, and also of this vicinity, presents at two o'clock P. M. of this day an order issued on the first day of February last by the District Court of this city signed by its Presiding Judge Don Salvador Fulladosa, in
922 which it is made known to this registry the nullity requested by the lawyer Don Juan F. Vias Ochoteco representing Doña Maria Rios y Gutman widow of Rubio in the suit instituted by her against Doña Manuela Gutman widow of Bustelo and Doña Petronila Rios de Noya, for the purpose of declaring null and without any value the private contract of transaction of hereditary rights and interests and of an expediente de dominion instituted for the purpose of inscribing the following properties:

A rural estate named "Islote Quiñones" composed of 88 cuerdas and 95/1000ths of another.

Another rural estate named "Islote Rivalta" composed of 150 acres.

Another rural estate named "Cercado Ramirez" composed of 350 acres 535/1000ths of another.

Another rural estate named "Madam Duran" composed of 107 acres 478/1000ths of another.

Another rural estate named "Los Puentes" composed of 36 acres 226/1000ths of another.

Another rural estate named "Cercado Torres" composed of 223 cuerdas and 140/1000ths of another, and

Another named "Cercado Maldonado" composed of 35 acres and 190/1000ths of another.

Which properties are located in the barrio of Rio Abajo and "Mulas" within the jurisdiction of Naguabo.

Humacao, May 5th, 1902. JOSÉ TORO RIOS.
F. HERNANDEZ.

This is all that appears from the contents of said entry.

At the request of lawyer Juan F. Vias I issue the present copy in Humacao on the 12th day of July, 1905.

(Signed) JOSÉ R. APONTE,
Fiscal of this District and
Acting Registrar of Property.

There are two revenue stamps of one dollar each cancelled by the seal of the Registry of Property.

923 Counsel for defendants objects to the introduction of said instrument on the ground that it does not tend in any manner to contradict the witness Fuertes as stated by counsel; on the further ground that, as appears from the testimony of the witness last examined, the document never became a part of the records of the Registry of Property, and never was extended therein, for the reasons stated by him; for the further reason that because of such failure to extend the same in the books of the Registry of Property the same became null and void; and for the further reason that the same was nullified by the decree of the Supreme Court rendered on the fourth day of June, 1901.

Overruled.

Exception by Defendants.

Witness Francisco Porrata excused.

DON JUAN VIAS OCHOTECO, witness called on behalf of the complainant, having been duly sworn, testified as follows:

Direct examination by Mr. HERNANDEZ:

Q. What is your name?
A. Juan Vias Ochoteco.
Q. What is your occupation?
A. Lawyer.
924 Q. Are you one of the attorneys for the complainant in this case?
A. Yes.
Q. Where do you reside?
A. In Humacao.
Q. How long have you resided in Humacao?
A. Since 1899.
Q. Do you know Mr. Aldrey, the notary?
A. Yes, I know him.
Q. How long have you known him?
A. Ever since I lived in Humacao.
Q. Are you a friend of his?
A. I am a friend of his.
Q. And up to the present time the relations between you and him are friendly?
A. Friendly.
Q. Do you remember about two or three months ago having had a conversation with him in this city with regard to the signing of a certain deed in his office?
A. Yes, I remember it.
Q. Please state the conversation in regard to that particular point?
A. I remember perfectly well that one afternoon promenading in the Plaza of the town I met Mr. Aldrey, we sat together, and then he said to me that Mr. Fuertes and Mr. José María Cuadra, who shortly before had arrived from San Juan, had begged him to

testify that Mrs. Manuela Gutman and her daughter Mrs. Petronila Rios had called at his notarial office for the purpose of
925 authorizing a deed referring to converting into a public instrument a private document of transaction in inherited property which constituted the basis for that transaction; that he said to these gentlemen in reply that he could only testify the truth, and that the truth was that neither one of these ladies had called at his notarial office on that day for that purpose, but simply Mr. José María Cuadra and Mr. Paco Noya who were the parties that participated and notified him to draw up that instrument; then I said to him in reply that it was a pleasure for me to see him in that position because inasmuch as the matter in question was one of such great importance as that in debate between Mr. Fuertes and Mrs. María Rios, and testimony not adjusted to the truth could bring about a ruin of a family, and I congratulated myself that he should be so disposed to tell the truth. This conversation I remember took place approximately during the last days of the month of May of this year. This is what I remember of this particular matter.

Q. Do you know Mr. Francisco Porrata, the employé of the Registry of Property?

A. Yes, I know him.

Q. Did you have any conversation with him yesterday afternoon about the visit of Mr. Garzot to the office of the Registrar of Property and the examination of the record of the property called "Cercado Ramirez?"

A. I had that conversation yesterday afternoon.

Q. Please state what that conversation was with regard to that particular point?

926 A. Mr. Porrata said to me that Mr. Faustino Fuertes intended to use him as a witness in this case; that whether he was called by Mr. Fuertes or by ourselves as a witness he would be required to testify that the examination on the books of the Registry of Property made by Mr. Garzot was made subsequent to the presentation of the deed of sale made by Mr. Palmer to Messrs. Garzot & Fuertes which is the subject of this lawsuit, because he knew that there existed in his office an order from the court issued greatly prior and presented to the Registry in which it was announced to all concerned—publicly, as the books of the Registry are—that there existed a lawsuit that may affect the titles of all the fincas or estates comprised in the contract or basis of transaction made by private document between Mrs. Manuela Gutman and her daughters Doña Petronila and Doña María Rios. I then asked him if it was true that he advised Mr. Fuertes to make that negotiation, and he then replied to me that knowing, as he did, the existence of this lawsuit, he could not honestly advise him to carry out that transaction; then he said to me that there existed an entry in the presentation of that order made in the office of the Registry of Property prior to the deed of sale to Mr. Fuertes and that it would be convenient for me for the purpose of the defense of Mrs. María Rios to request a copy—a certified copy of that entry. Then I requested the certificate and advised Mr. Hernandez that it would be

convenient to use the testimony of Mr. Porrata more in order to prove if it was prior or subsequent the examination of the books of the Registry of Property with regards to the deed of sale;
927 that that examination would be convenient to the end of showing incorrectness of the testimony given by Mr. Fuertes who testified that the Registrar said to him that he could make that transaction without danger; that with respect to the entries on the Registry of Property all the data favorable or adverse to Mr. Fuertes or to any of the parties to this suit are set forth in an explicit manner in those entries and it is very clear that any transaction made with exact knowledge of the statements made in those inscriptions are either in favor or against the right of the parties to this suit——

Counsel for defendants calls the attention of the witness to the fact that he is not arguing the case as a lawyer, and should, therefore, confine himself to the question asked him.

Witness (Continuing): Perfectly well; I was explaining why I did not attach any importance to the examination of the books and only proposed an examination of this witness to justify the contradiction of Mr. Fuertes.

Counsel for defendants moves to strike out that part of the answer of the witness subsequent to the relation of the conversation with the former witness Mr. Porrata on the ground that it is not responsive to the question, and that it contains no statement of fact but merely an argument of reasons and conversations between associate counsel for complainant.

Sustained.

Counsel further moves to strike out the first part relating to the alleged conversation with the witness Porrata on the ground that the complainant is not allowed to impeach her own witness as has been attempted to do with the testimony of the witness by this witness, but her right, in the event of finding a witness hostile is limited to the production of other substantive evidence to
928 overcome the evidence of the hostile witness; and further upon the ground that it is shown by the testimony of this witness and the voluntary assistance rendered him by the witness Porrata in calling his attention to the entry of May 5th, 1902, that said witness Porrata is not hostile.

Overruled.

Exception by defendants.

Cross-examination by Mr. Pettingill:

Q. Up to the time that Mr. Porrata called your attention to this entry of the fifth of May, 1902, you had no knowledge of it, did you?

A. I had knowledge that the order had been presented in the Registry of Property and I also knew that in an unjustifiable manner the note to which the order of the court referred has not been entered, because, in those cases the Registrar is not empowered to discuss the order of the court; and inasmuch as request was made for the nullity of an expediente of dominion and the inscription of

that expediente in the registry the Registrar could not discuss that order, and he ought to have without fail put a note on the margin of the entry of the inscription of the expediente of dominion; that under this supposition I did not attach any importance to the existence of the entry of presentation of that order, but I give a great deal of importance to the fact that the order of the court has been d obeyed, and that against the provisions of the law that note has not been entered; and particularly I have been greatly surprised that upon Mr. Garzot going to examine the books of the Registry of Property the official in charge of the Registry having an entry in
929 which the existence of a lawsuit is set forth did not show it to Mr. Garzot, inasmuch as Mr. Garzot was there to get information to decide whether or not he would carry out the transaction about this finca, the subject of the lawsuit.

Q. Well, do you think this is the proper court to try the Acting Registrar of Property for not doing that?

A. I understand that when a lawsuit is started and there are presented as proof titles inscribed or recorded in the Registry of Property the court that tries the case is the one called upon to determine if those proofs are efficacious and if they have been performed in accordance with law, and it is very plain that if a public official has failed to comply with his duty in an official act that omission cannot be imputed by the party who has complied with all the requisites of law; the court at the proper time will have to take into consideration this fact.

Q. Mr. Vias, you have the reputation of being not only an intelligent man but an intelligent lawyer; can you answer my question? Try again.

Q. (Last question above repeated to the witness.)

A. I believe that——

Q. Answer "yes" or "no." Your associate counsel has been requiring witnesses here to answer "yes" or "no" for several days; now I want you to answer "yes" or "no."

A. I believe no.

Mr. PETTINGILL: Now, you can take all the afternoon if you want to.

WITNESS: Only the necessary part of it. I believe that if it is a matter of investigation the acts of a public functionary the
930 court trying the case in which that negligence is proven cannot take action against that functionary, but the act performed with negligence on the part of that public official, and that is used as proof, may be freely adjudged by the court trying the case.

Witness excused.

Counsel for defendants now replying to the demand of counsel for complainant for the production of a certain letter referred to in a statement of the witness Francisco Noya given in the course of his testimony given on the tenth instant, states: That as that part of the statement of said witness referring to said letter not being in reply to any question put to the witness, and neither said statement of the witness nor the said letter having any pertinency, relevancy

or materiality to any of the issues in this case, said witness, under the advice of counsel, declines to produce said letter.

Counsel for complainant in view of the failure of the defendants to produce said letter hereby introduces the complainant, the writer of said letter, for the purpose of showing its materiality and relevency, and of contradicting the statement of the witness that the same was an indecent letter.

DOÑA MARIA RIOS, complainant, re-called, testified as follows:

931 By Mr. HERNANDEZ:

Q. Mrs. Maria Rios, Don Francisco Noya testified two days ago that a few days after the signing of the basis of settlement he received from you a certain letter which was indecent. Please state whether that is true or not?

A. That it was indecent? I don't remember that. What I do remember is that I wrote to my sister where I stated to her and lamented very much of the deceit I had suffered in the document I had signed because I had signed for she had signed it; that in that letter I also asked her to join me to claim our rights and try to save that inheritance which in that way we would lose, after I became aware of the fact through the attorney José Maria Cuadra. I remember more or less that those were the terms of the letter, very contrary from being indecent, calling upon her sentiments to join me to claim what legally belonged to us.

932 Q. Have you ever written to Paco Noya an indecent letter?

A. Never that I remember.

Q. Have you ever written to his wife an indecent letter?

A. I don't see in what indecent terms I could write to my sister.

Q. By whom?

A. By Miguel Bustelo and Manuel Bustelo.

Q. They are the sons of Doña Manuela Gutman and her second husband, are they not?

A. Yes.

Q. Are they very friendly to the defendants in this case?

A. I do not know.

Q. I ask you whether they are friendly to Victor Burset or to Paco Noya or to Petronila Rios or to Garzot & Fuertes?

A. Yes, of course; both of them are living with Mr. Burset; everybody knows they are living in the house of Mr. Victor Burset.

933 Q. Is that the only purpose that they come to your house for?

A. Nothing else, because they never go to my house for anything else; if they do ever come it is to mortify me in regard to these matters.

Witness excused.

JESUS MARIA PORRATA, witness called on behalf of the complainant, having been duly sworn, testified as follows:

By Mr. HERNANDEZ:

Q. What is your name?
A. Jesus Maria Porrata.
Q. Where do you live?
A. In Humacao.

934 Q. Are you a brother of Francisco Porrata, an employé of the Registry of Property?

A. Yes, sir.

Q. Do you remember having had with him a conversation yesterday or this morning about the examination of the books of the Registry of Property by Garzot & Fuertes in connection with the purchase made by them of the "Cercado Ramirez" in 1902?

A. Yes.

Q. Please state what that conversation was with regard to this particular point?

A. I said to him that he was to be used as a witness to state here what he had already said to me on various occasions as to that he had advised Mr. Garzot before making the purchase of the finca "Cercado Ramirez"——

A. (Continuing.) And he then said to me that with regard to that point he would not testify anything but that he had already said to Mr. Juan Vias that he would testify here that Messrs. Garzot & Fuertes had gone to examine the books of the Registry after they carried out the transaction, and in that way he would be in a better position.

Q. Did he in that conversation tell you that he had advised Garzot & Fuertes not to purchase this property?

935 A. This morning. We did not speak anything with regard to that point: I said to him that we would use him in regard to that point and then it was that he replied to me what I have said with regard to the conversation or to the offer to which he had made to Mr. Vias with regard—that the examination of the books of the Registry of Property was made after the purchase of the "Cercado Ramirez" by Messrs. Garzot & Fuertes, in view of the fact that he had not fulfilled to Don Juan what he promised me I also found myself under the obligation of not complying with regard to what I said to him of the purchase that he had indicated to me before, and I then said to Mr. Hernandez if it was true or not that he had had any conversations with me three or four months before with regard to whether or not Garzot & Fuertes had been advised in regard to the purchase of this land: he replied negatively telegrams confirming that not only by word but that wire I have had, with regard to that point, conversations with him.

Q. Let me see that telegram. (Witness hands telegram to Mr. Hernandez.)

Q. Please look over that telegram (handing telegram to witness) and refresh your memory and tell us from whom you received that telegram?

A. I received this telegram from my brother.

Q. When did you receive that telegram?
A. I received that telegram in San Juan.
Q. How long age?
A. In March or April.
Q. In reply to what?
936 A. In reply to two telegrams that I sent.

Complainant here offers in evidence the said telegram for the purpose of contradicting the testimony of Francisco Porrata that he has never received any telegram from Garzot & Fuertes nor sent any telegram to this witness. The same is herewith filed and marked "Exhibit W. for Complainant."

937 EXHIBIT "W" FOR COMPLAINANT.

Telegram.

HUMACAO, P. R., *April* 6, 1905.

Jesus Maria Porrata, San Juan, P. R.

I do not preserve telegrams. They were received after negotiation of sale.

(Signed) PACO.

937½ Counsel for defendants objects to the foregoing telegram because it is immaterial and has no tendency to contradict the witness, as stated by counsel.

Cross-examination:

Q. Then you want us to understand that your brother has
938 deliberately stated what is not true under oath?
A. What I mean to say is that as he stated that he has had no conversation with me regarding that point I want to prove by that telegram that there has been such conversation.
Q. Then what he stated was not true?
A. Perhaps he didn't remember it at the time.
Q. Has he any interest that you know of in this case?
A. I do not know.
Q. So far as you know has he any?
A. Material interest?
Q. Of any kind?
A. Morally I think that he may have some.
Q. Why?
A. Because he is an employé and has been for a long time an employé of Mr. Toro, and I think that Mr. Toro sympathizes with the case of the defendant and he as subordinate has aimed his sympathies towards those of his principal.
Q. And that is the only interest you know of?
A. That I know.
Q. Now how much interest have you in this case?
A. Morally.
Q. Nothing else?

A. Nothing else.
Q. Were you not in San Juan on this business?
A. No, sir; just as a spectator, through curiosity.
939 Q. Have you been here during the last two or three days out of curiosity?
A. Yes, sir.
Q. Nothing more?
A. Nothing else.
Q. Haven't you been consulting with the complainant and her attorney, Mr. Hernandez, and her attorney Mr. Vias, every day since we have been here taking testimony?
A. I have helped them.
Q. Been here during all the sessions haven't you, all of the time?
A. Yes, sir.
Q. And that is all through curiosity?
A. And the moral interest I have.
Q. How many times have you been in San Juan out of curiosity in this case?
A. The number of times that the case has been set by the United States Court.
Q. You have accompanied the plaintiff back and forth each time she has been to the capital?
A. I have been there but not with her.
Q. Is it not a fact that you have a particular interest in the complainant, are especially friendly with her?
A. The interest is simply moral and nothing more, because I have seen something like several vultures trying to eat up a dove.
Q. You are then what would be called a "philanthropist?"
A. No, in that sense that cannot be called "philanthropist." Sympathy.
940 Q. Sympathy?
A. Sympathy for the case. Undoubtedly.

Witness excused.

SAN JUAN, P. R., *July 14th*, 1905.

Complainant here offers in evidence that part of the record of the testamentary proceedings of the deceased Don José Rios y Berrios, now in custody of the Clerk of the United States District Court for Porto Rico, from pages 33-63 inclusive, which is the inventory made with the intervention of Doña Manuela Gutman of the properties of said José Maria Rios on the 12th day of October, 1875, for the purpose of showing the properties left by him and which passed to the possession of Doña Manuela Gutman, and to contradict the testimony of Lopez Landrón in this respect; also for the purpose of showing the valuation of said properties at that time, approved and ratified by the said Doña Manuela Gutman. Filed and marked "Exhibit X. for Complainant."

Counsel for defendants objects to the foregoing document because it is immaterial to any of the issues made by the pleadings, and also

because too remote to be material in any respect, or to accomplish the object specified in the offer of counsel.

Overruled.

Exception by defendants.

Complainants closed.

941 EXHIBIT "X" FOR COMPLAINANT.

Translation from pages 33 to 63, inclusive, of the record of the testamentary proceedings of José Rios y Berrios.

Piece 1. In the town of Humacao on the twelfth day of the month of October, 1875, assembled in the dwelling house of the deceased Don José Maria y Berrios, resident of this district, for the purpose of proceeding extra-judicially to the making of the inventories and valuation of the properties left upon his death, the widow, the executor Doña Manuela de Gutman and Don José Miguel Berrios in his capacity of curator *ad litem* of the minor children and heirs of the deceased named Don José, Doña Maria and Doña Petronila, together with the expert assessors appointed by said widow and curator, to wit, Don Juan N. Guzman and Don Rodulfo L. Perez, for the agricultural properties; Don Federico Vellón for the house that he had with Tiburcio Cordero; Felipe Senaran for the masonry work with Francisco Sosa; for the machinery Federico Gorvea y V. L. Laiganighan and J. Algarin and S. Rios for the clothing and jewels. The proceedings were begun by making an inventory of the properties declared by the widow in the following manner:

Jewels.

Different items stated making a total of the value of the jewels of	$450.00

Live Stock.

Cattle existing in the possession of Victorio Ortiz in the Pasto Viejo—198 head of cattle aggregating a total value of	3,310.00
In the Cercado "Pasto Viejo":	
129 head of cattle of the total value of	2,920.00
Breeding cattle in the plantation Pasto Viejo:	
27 heads of cattle of the value of	566.00
Cattle existing in the plantation "San José":	
134 heads of cattle aggregating a total value of	2,041.00
Bulls existing in the plantation "Yruena":	
170 head valued at	8,500.00
942 Breeding cattle in the plantation "Pasto Viejo":	
36 Bulls at $45 pesos each	1,620.00
53 young steers at 40 pesos each	2,120.00
Total	$3,740.00

Cattle existing in Naguabo:	
731 heads of cattle of the value of	27,010.00
Total value of the cattle in the different properties mentioned	48,041.00
Horses existing in Pasto Viejo:	
22 horses of the value of	722.00
Mules:	
8 mules of the value of	350.00
Horses existing on the plantation Yruena:	
11 horses of the value of	1350.00
Horses existing in Naguabo:	
3 horses of the value of	110.00
Total value of horses and mules hereinbefore mentioned	2532.00

Furniture.

Existing in the house of the deceased of the total value of	1659.00
Clothing—of the total value of	350.00

Real Properties.

The plantation "San José" situated within this district in the barrio of Mambiche, place called Las Marias, composed of one thousand six hundred and six cuerdas and sixteen hundred and sixty ten thousandths of another, classes in the following manner:

276 cuerdas 5420/10000ths of another of level land of the first class at $80 pesos each	$22,123.36
122 cuerdas 3920/10000ths of another level land of the second class at $40	4,895.96
377 cuerdas and 7740/10000ths of another of higher land at $35	13,222.09
52 cuerdas and 7922/10000ths of another of pasture land at $20	1,115.84
262 cuerdas 8130/10000ths of another of swampy wooded land at $10	2,628.13
943 510 cuerdas 8056/10000ths of another of high land at $16	8,172.88
Total	52,158.26

Planting.

107 acres of spring planting at $50	5,350.00
75 acres of retoño cane at $25	1,875.00
Total	7,225.00

Wood and Masonry Buildings.

A dwelling house roofed with zinc in bad condition, measuring 15 metres long by 11½ wide, with its kitchen roofed with zinc of 10½ rods in length by 7 in width	1,084.00
A peons' house roofed with zinc of 19 metres in length by 10½ wide	1,102.00
Peons' house in bad condition roofed with earthern tiles 9 metres in length by 9 in width	350.00
Storehouse roofed with zinc of 36 metres in length by 10 in width in bad condition	894.80
House with zinc roof of 28½ metres in length by 9 in width	1,143.00
A boiler and clarifier house roofed with zinc measuring 28½ metres in length by six in width	250.00
A bagasse house roofed with zinc of 44½ metres in length by 9 in width	746.00
Another bagasse house of 45½ metres in length by 7½ in width	922.00
Another bagasse house roofed with rattan of 46 metres in length by 8 in width	584.00
The two flues of the furnace with 8 deposits set in	4,000.00
The mounting of the boiler made of brick	500.00
The chimney of 17 feet at the base and 100 feet high	3,500.00
Four pillars for the support of the clarifiers of two square feet and 3 feet high of brick	30.00
The foundation of the machinery	402.00
A store of 500 yards of stone and brick	2,000.00
6 pillars for the front part of the machinery house	54.00
5 lighters	18.00
50 yards on the east side of the front part of the house of brick	300.00
30 yards on the northern part of brick	90.00
Total	17,969.00

944 Machinery.

A steam engine no- mounted of from 10 to 12 horse power, much used with its new boiler	5,000.00
2 clarifiers (1 of them in bad condition)	1,000.00
2 old boilers	200.00
Total	6,200.00

Fixtures and Utensils.

14 carts in bad condition at $40	560.00
12 chains	18.00
16 yokes for the oxen	8.00
4 plows	160.00
4 American plows in bad condition	80.00

2 American hill-side plows	50.00
2 "Folloras" (1 small, the other large)	60.00
3 "Morocos"	48.00
Total	1,184.00

Working Oxen.

153 head at $50	7,650.00

Horses and Mules for the Service of the Plantation.

5 head of horses of the value of	182.00
Grand total value of the plantation "San José"	$92,569.00

Real Properties Existing Within This District.

70 acres of level land in the plantation "Pasto Viejo" at $100.00	7,000.00
8 cuerdas 7500/10000ths of another of high land in the same plantation purchased from Maria Cruz Negrón at $16.	140.00
92½ cuerdas which is the rest of the land purchased from Mr. Sandox at $80	7,720.00
15 cuerdas 6400/10000th*d* of another of level land in city lots within this municipality at $100	1,564.00
Total	16,424.00

Real Properties Existing in Naguabo.

"Cercado Ramirez" situated in the Rio Abajo composed of 350 cuerdas 4131/1000ths of another, classified in the following manner:

314 cuerdas 4131/1000ths of another of level land of the first class at $125.00	39,301.63
945 36 cuerdas 1220/10000ths of another of swampy wooded land at $50	1,806.10
Total	41,107.73

"Yslote Rivalta" in the Same Barrio of Rio Abajo.

150 cuerdas of the first class at $100	15,000.00

Property named "De Madam Duran" situated in the place called "Los Puentes" composed of 107 cuerdas 4680/1000ths of another, classified in this manner:

87 cuerdas 3430/10000ths of another of the first class at $80	6,987.44
20 cuerdas 1250/10000ths of another of high land at $40	805.00
Total	7,792.44

Estancia "Los Puentes" situated in the place called "Boca Prieta" composed of 36 cuerdas 2230/1000ths of another, classified as follows:	
34 cuerdas 9660/10000ths of another of level land at $50	1,748.30
1 cuerda 2750/10000ths of another of wooded swampy land at $20	25.14
Total	1,773.44
"Cercado Torres," situated in the barrio of Rio Abajo composed of 223 ar.s 1400/1000ths of another classified in the following manner:	
173 cuerdas 3560/10000ths of another of level land at $80	13,868.48
49 cuerdas 7840/1000ths of high land at $25	1,244.60
Total	15,113.08
Islote Quiñones, situated in the barrio of Rio Abajo, composed of 88 cuerdas 950/1000ths of another level land of the first class at $125	11,011.87
48 cuerdas 310/1000ths of another, plantation of Garriga, at $75	3,602.25
5 cuerdas 6941/10000ths of another, corresponding to the deceased Don José Maria in the properties sold to the Succession of his father by Don N. Garriga	455.52
Grand total value of the real properties	$112,280.31
Houses.	
Dwelling house of the deceased situated on city lots of this municipality, of masonry and wood, roofed with shingles	12,000.00
Assests.	
70 slave cedulas, to-day being free persons, with 41/100ths of another, calculated by the widow and curator of the minor at $200	14,082.00
946 Amount due from Don Cristobal Paxot on a note payable to the deceased	1,043.28
Amount due from the same person on another note payable to Don Genaro Almodova, for which the deceased, Don José Maria was responsible, as guarantor, with the interest stipulated until the lattter part of September last	7,620.20
Due from L. Alcindor of Guadalupe, for purchase of live-stock	1,296.00
From Don Demetric Quiñones, of Yabucoa, for a loan	100.00
From Don Ramon Vega on a note	130.00
Total of assets	24,271.48

Liabilities.

Amount due to Genaro Almodova on the note of Paxot, with interest to September last	7,620.20
Due to F. H. Cooper	340.00
Due to Federico Goover	200.00
To Antonio Soler, representing his children, for the purchase of land and other properties of the estate of Don José Maria Rios, installments corresponding to the years 1875, 1876, 1877 and 1878	11,530.00
Due to Ramon Pou in representation of his wife Amalia Rios, for the purchase of lands, installments corresponding to 1876, 1877 and 1878	8,354.91
Due to Battazar Fortuna, representing his wife Amelia Rios, for the same consideration as the foregoing	8,354.91
Due to Don Avelina Rios for the same	15,825.75
Due to Don Cándido Faura	31.14
Due to Domingo Ramirez for his commission on the purchase and sale of live stock	1,820.00
To Doctor Pablo Font y Martelo for his professional services rendered to the deceased	100.00
To Dr. N. Castaña for the same	108.00
To Dr. Genaro Almodova for the same	200.00
To Dr. Lamoneux for same	200.00
To the Practicante Don Guillermo Sanchez, same	4.00
To Aurelio Dapena for the purchase of live-stock	2,340.00
To N. Carrasquillo of Yabucoa, for the same	2,250.00
To Francisco Rivera for the same	1,530.00
To N. Peña of Naguabo for the same	191.00
To N. Aguirre of Caguas, for the same	2,666.66
To José del C. Borges, for the purchase of a cow	22.00
947 To Domingo Ons on account current	558.00
To Emeterio Colon, for salaries and money advanced	665.69
For the payment of unliquidated accounts for which the deceased José Maria Rios is responsible, and other expenses up to the protocolization of the present account and partition, without prejudice to the surplus or shortage	8,000.00
For the funeral and burial expenses	75.45
Total of liabilities	72,987.71

General Resumé.

Total value of the jewels described	450.00
Total value of the cattle	48,041.00
Total value of the horses and mules	2,532.00
Total value of the furniture of the house of the deceased	1,659.00
Total value of the clothing	350.00

Total value of the plantation "San José," with all its appurtenances	92,569.00
Total value of lands	112,280.31
Total value of the house of the deceased	12,000.00
Total value of the assets	24,271.48
Grand total of the capital included in the inventory	294,152.79

Whereupon the widow and curator of the minor children having stated that she had no knowledge of any other properties belonging to the estate of the deceased José Maria Rios y Berrios outside of those included in the inventory, and offering to add thereto those which might be found in the future, this inventory was concluded, all of the properties remaining in the charge and keeping of the said lady as the tutor of her minor children, and as such the only and legitimate administrator of the inheritance belonging to said minors.

All of which is signed together with the curator *ad litem* and expert appraisers on the date mentioned at the beginning of this inventory. Amended "thirty"—valid. Erased "y" not valid.

(Signed) MANUELA G. DE RIOS.
J. M. PEREZ.
J. N. GUZMAN.
F. GOWER.
FEDERICO BELLON.
TIBURCIO CORDERO.
JOSÉ PIO ALGARIN.
R. L. PEREZ.
V. DE LAIGANIGHM.
FELIPE SENERAN.
FRANCISCO SOSA.
RAMON RIJOS.

948 This was all the testimony produced before the examiner.

It was agreed between Counsel for Complainant and Counsel for Defendants respectively, that, owing to the great length of the testimony and the fact that the same was not concluded until July 17th, 1905, the time fixed in the order appointing the Examiner herein should be extended to the first day of September, 1905, in order that the Examiner may be able to typewrite said record, together with a large amount of exhibits, translations, etc.

All of which is hereby respectfully submitted.

(Signed) CHAS. H. MAGIE, *Examiner.*

949 In the District Court of the United States for Porto Rico, Sitting at San Juan.

MARIA RIOS
v.
VICTOR BURSET ET AL.

Amendment to the Amended Bill of Complaint for the Purpose of Conforming the Latter to the Proof.

Comes now the complainant in the above entitled cause and represents to this court that in the filing of her original bill and the amended bill of complaint herein the property which is the subject of the suit herein was described literally from the inscriptions thereof contained in the Registry of Property, which were made as a result of the so-called expediente de dominio (dominion proceedings) and which for the purposes of the parties interested in the inscription of the said properties at the time were stated to have certain values respectively. But complainant states that such values, as appears by the evidence herein, were fictitious and entirely too low in accordance with the theory of complainant's case.

For the purpose therefore of conforming the said original bill and the amended bill of complaint to the proofs herein complainant prays that the same may be amended in the following respects, to-wit:

At the end of the description of the proper- described as Islote Rivalta, where it is stated "which property is worth seven
950 thousand five hundred dollars" substitute "which property is worth fifteen thousand dollars."

At the end of the description of the property described as Cercado Ramirez, where it is stated "which property is valued at fifteen thousand dollars" substitute "which property is worth thirty-five thousand dollars."

At the end of the description of the property designated as Madam Duran, where it reads "valued at three thousand seven hundred and fifty dollars" substitute "is worth ten thousand seven hundred and fifty dollars."

At the end of the description of the property designated as Los Puentes, where it is stated "which property is valued at fifteen hundred dollars" substitute "three thousand six hundred dollars."

After the description of the property designated as Cercado de Torres, where it is stated "and valued at five hundred dollars" substitute "twenty-five thousand dollars."

After the description of the property designated as Cercado Maldonado, where it is stated "valued at seventeen hundred and fifty dollars" substitute "worth three thousand seven hundred and fifty dollars."

After the description of the property designated as Islote Quiñones, where it is stated "valued at four thousand four hundred dollars" substitute "worth eight thousand eight hundred dollars."

On the second page of said amended bill of complaint strike out the words "and by purchase from his sisters with his separate funds" which appear in the paragraph reading as follows: "That
951 the said property was separate property of the said José Maria Rios, Sr., theretofore derived by inheritance from his father and mother and by purchase from his sisters with his separate funds and is described as follows."

TWELVE TWELVE

(Signed) F. H. DEXTER,
Solicitor for Complainant.

(Signed) JUAN PIAS OCHOTECO,
WILLIS SWEET,
JOSÉ HERNANDEZ,
Of Counsel.

To N. B. K. Pettingill, Esq.:

You will please take notice that the foregoing petition to amend has been filed in the District Court of the United States for Porto Rico, and that the same will be called for hearing on Monday next at ten o'clock A. M., or as soon thereafter as counsel can be heard.

(Signed) F. H. DEXTER,
Solicitor for Complainant.

Service of copy of foregoing motion acknowledged this third day of November, 1905.

(Signed) N. B. K. PETTINGILL,
Of Counsel for Def'ts.

952 *Journal Entry.*

(November 8, 1905.)

Eq. 196.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Now comes the complainant herein by her solicitor F. H. Dexter and calls up her motion to amend her bill of complaint to conform to the proof, and after hearing N. B. K. Pettingill counsel for defendants in opposition thereto said motion is allowed, to which said defendants except, whereupon the hearing of said cause upon its merits is begun, F. H. Dexter, Willis Sweet and Juan Vias Ochoteco being present for complainant and N. B. K. Pettingill for the defendants.

953 *Entry.*

Clerk's Minutes.

Feb. 19, 1906.

No. 196. Order & Opinion in favor of Complainant. Final Decree to be prepared.

954 *Opinion.*

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Opinion.

Delivered in open court February nineteenth, nineteen hundred and six.

The importance of this case, together with the number of parties interested, suggests that an opinion preliminary to the more formal Findings of Facts and Conclusions of Law would be proper.

José María Rios, Sr., a prosperous citizen of the District of Humacao, Porto Rico, died in the year 1875, possessed of two thousand acres of land, subdivided into seven or eight productive farms, being about equally divided, one-half located in the District of Humacao and the remainder in the Naguabo district.

The entire lands and farms in the latter district of Naguabo aggregate nine hundred and ninety-two acres, and were all inherited by the said José María Rios, Sr., deceased, from his parents.

The lands in the Humacao District were not so inherited, a large portion of the same having been acquired during the mar-
955 riage relations of the deceased with Doña Manuela Gutman, which commenced at the time of their marriage in 1866.

By the will of José María Rios, Sr., he devised the income of his large estate to his widow, during widowhood, and constituted his three minor children, María Rios, the complainant, Petronila Rios, a defendant, and the late José María Rios, Jr., who died in his minority, his sole and universal heirs to all of his said real estate in both the Humacao and Naguabo districts.

The Rios children by the will, were required to be edueated and supported from out the proceeds of the estate by the widow, who became executrix, and also, by the will, guardian of the said minor children. She entered upon this dual trust, and after serving two years she married Miguel Bustelo, and with him she lived on said estate for ten years following, when he died leaving her five children. She never remarried. She remained, however, in full control of all these numerous farms, collecting the large amounts of the income, estimated to yield thirteen thousand dollars annually.

Under the then existing laws of Porto Rico on her remarriage Manuela Gutman forfeited her right to the total income or usufruct under the will and it reduced her share to the *"cuota marital"* or statutory portion of one-fourth until her death or subsequent marriage. This was subsequently increased by a life estate in the one-third share of José María Rios, Jr., who, as stated, died in his infancy.

In disregard of the law and the terms of the will the widow continued for a period of over twenty-five years from the date of the death of José María Rios, Sr., until a few months before her
956 own death in the year 1902, to operate and manage this large estate and to appropriate the income thereof for her own use and support of her children by the second, as well as by the first, marriage. She failed to file an inventory or to make any accounts or settlements of the estate with creditors or heirs during this entire period of twenty-five years of her management, in violation of the express terms and directions of the will, and the requirements of the law.

This neglect and disregard of the rights of her children by José María Rios, Sr., in time caused great dissatisfaction, and finally led to the estrangement of the complainant and her mother and her sister Petronila Rios de Noya. Complainant's husband had been insisting upon the filing of the inventory or a settlement of the estate, and had instituted proceedings in the district court of Humacao to compel the mother to do so. He was taken ill while the proceedings were pending and died, leaving the complainant and three children to survive.

Matters continued thus, leaving the widow in undisturbed possession until early in the year 1901, when Victor Burset, the principal defendant in this case, and who had married a daughter of Manuela Gutman by her marriage with Bustelo, went to live in the same house. He became her confidential agent and manager, as well as adviser, and continued to act in such capacity until her death in the month of June, 1902.

In December, 1901, Manuela Gutman, the mother of complainant, caused her daughter Petronila Rios de Noya to employ her friend, attorney José María Cuadra, of Humacao, to institute testamentary proceedings in the district court of Humacao to compel her
957 (Manuela Gutman) to file the inventory and long delayed settlement in said court. It is well known to them that complainant had similar proceedings pending in which her sister Petronila had refused to join, and that it was her, the complainant's desire to have the estate of José María Rios, Sr. settled before the death of Doña Manuela Gutman, and the consequent avoidance of complications likely to arise with her second family—the Bustelo children, who were living with their mother on said estate.

Francisco Noya, husband of Petronila, persuaded complainant to unite in said new petition, and also specially urged and persuaded her to employ José María Cuadra, the counsel of his wife Petronila, the defendant, as a disinterested and reliable attorney.

Consequently, relying upon these assurances, complainant employed Cuadra, who accepted the trust, concealing, however, as did Noya, that he was chosen at the instigation and dictation of the mother of Doña Manuela Gutman.

On or about January sixteenth, 1902, following the filing of the said petition, being less than thirty days, complainant was visited at her house by Cuadra her own attorney, Rafael Lopez Landron her mother's attorney, Manuel Argueso and Francisco Noya without any previous negotiations and complainant was asked by them to sign a purported "family settlement" and "private agreement" for the purpose of discontinuing this newly instituted suit.

The private agreement was prepared in the store of Manuel Argueso in the presence of Francisco Noya and Jesus Almiroty. This paper was dictated by Rafael Lopez Landrón, an attorney of San Juan summoned by Doña Manuela to bring about a settlement in her behalf; and he, in this store, and on that occasion, signed said alleged family settlement and paper as attorney for his client Doña Manuela Gutman; and without any debate or notice to or authority from complainant, as already stated, José María Cuadra signed same as attorney for the complainant. The entire party of four left the store, and after having Jesus Almiroty sign the
958 said private agreement in blank as a witness, he being unable to leave the store to accompany the party, they first visited Doña Manuela and the defendant Petronila Rios de Noya, who duly signed said paper already previously witnessed in the store by Almiroty and attested by Manuel Argueso, Francisco Noya and the two lawyers. An hour or two later, about eight o'clock P. M., the same four gentlemen met by agreement and visited the house of complainant and presented the said private paper to her, as she substantially testified, with the unanimous assurance that the mother had conceded everything, and that they were bearers of a joyful message of harmony, and that her rights in the real estate were in no way "involved" or "prejudiced;" that all she was surrendering was the "usufruct" for the brief life expectancy of Manuela Gutman who was advanced in years and of infirm health, and nothing more. Thereupon, accepting these assurances in answer to her questions as true, the complainant signed the same. It was orally agreed that she was to be furnished with a copy of the paper the next day, and that owing to the lateness of the hour and the hurry of Landron to get away, another paper was to be signed by all the parties, it being represented as a petition required in the District Court of Humacao to withdraw said pending proceedings by reason of this private agreement and family settlement. The day following, complainant, at the request of attorney Cuadra, signed this second paper without reading it, being signed by her in pursuance of the agreement of the night previous, as understood by complainant. The day following, a copy of the private agreement signed by her on the 16th was submitted to complainant. On reading this, she discovered, as she declares in her testimony, the imposition and fraud practiced upon her in the presentation and execution of the paper

which she had signed; that instead of preserving and reserving her real estate from out said settlement, she discovered for the first time that the object of said paper, the private agreement, was to wholly divest herself of her inheritance in the Naguabo District properties. Complainant promptly notified attorney Cuadra, to whom Rafael Lopez Landron had given the entire business to
959 represent him as the attorney of Doña Manuela, that she would not abide by the terms of said private agreement and that she would revoke the same. She thereby did, within four days thereafter, revoke the same, and insisted that the original should be destroyed because not as represented to her; and she refused further to become a party to merging said private agreement in a public document, as required by the recording laws of Porto Rico where titles to real estate are involved; this acknowledgment before a notary public being an indispensable requisite, as she was well aware, to have the paper placed upon record and to distinguish it from the case of a "private agreement" which was not prepared or acknowledged or recognized by her to be a public document.

Notwithstanding this prompt notice of recission and revocation of the private agreement by complainant and her refusal to make the public document mentioned therein, attorney Cuadra, without the knowledge of complainant, proceeded to use the petition to discontinue the pending action, which had been directed to the District Court of Humacao and which had been signed by complainant as part of the private agreement, for another and fraudulent purpose of having said petition and private agreement used in a summary and *ex parte* proceeding in said Court, known as "expediente de dominio," for the purpose of having the title and interest of complainant in the Naguabo real estate vested in Manuela Gutman. With said unauthorized use of said papers by said Cuadra pretending to represent complainant, said District Court of Humacao was imposed upon and assumed jurisdiction to divest the title of complainant and to transfer the same to Doña Manuela Gutman in the very valuable real estate and farms of complainant in the Naguabo District. That complainant owned the undivided one-half of said tracts or farms and estimated the value to be upwards of thirty thousand dollars; that complainant testified that by the merest accident some months following, she discovered the publication of the proceedings in said Court to enforce said private agreement in which she was
960 interested, and she immediately employed counsel to protest against the action of said Court, and particularly the unauthorized action and conduct of Cuadra in assuming to act as her attorney in said proceeding. That said Court dismissed the petition of complainant to intervene in said proceedings or to reform said private agreement, the Court decreeing that her remedy belonged to the proceedings known as "Contentious actions" and could not be passed upon in the *ex parte* "Expediente de dominio" proceedings then before the Court. Consequently, said Court decreed on said proceedings that the title should be inscribed to all of her said half interest in said real estate in the District of Naguabo in the name of Manuela Gutman.

Manuela Gutman, on the rendition of the final decree of said Court so procured, immediately conveyed said described lands of complainant to the defendant, her son-in-law Victor Burset for the simulated consideration of thirty thousand dollars and said defendant Burset placed said deed upon the record.

Up to the time of this large purchase, Burset was classed in the community where he had always resided, as a man of no means or credit, and the purported consideration of the said deed was at once questioned, Burset having no occupation save as agent and manager for Doña Manuela Gutman of the estate of José Maria Rios, Sr., situate in Humacao and Naguabo districts.

In but a short time thereafter, Burset conveyed the entire two thousand acres of said farming lands to Santiago R. Palmer, a joint defendant in this action, for the pretended consideration of forty-three thousand dollars.

The complainant's theory as to the fraudulent conspiracy set forth in the bill was substantially corroborated by the frank testi-
961 mony of Santiago R. Palmer, a defendant, who declared on the hearing that he had no substantial interest in the conveyance recited from Burset, his co-defendant; that it was conveyed to him simply because of his superior credit or reputation, and that the consideration that he paid—thirteen thousand dollars—was handed back to him by Burset a few moments after the passing of the deeds. Mr. Palmer averred on oath that he had never even visited any of these productive farms, and that although still holding the title deeds in his name on the records, he had never taken the possession and that he had never collected a dollar nor received a cent of the profit from the same, Burset, the defendant, having done so under power of attorney without accounting and retained possession and continued collecting the rents and profits and managing the farms unsold by Palmer, in all respects as he did in the lifetime of Doña Manuela Gutman.

Complainant's testimony assailed the conveyance of one hundred acres of the finest farming land in the Naguabo District which was made to Petronila Rios de Noya, defendant, at the instigation and direction of the co-defendant Burset, by deed executed therefor by said defendant Santiago R. Palmer, the holder of the legal title, for the alleged simulated consideration of four thousand dollars, which, in fact, from the testimony and attendant circumstances is shown was never paid; or, if paid, was immediately handed back as was done in Palmer's own case.

The defendant Santiago R. Palmer, the holder of the legal title, next conveyed, at the instigation of the defendant Burset, as complainant's proof shows, three hundred and fifty acres of the Naguabo District farms to a firm known as Garzot & Fuertes, who had
962 been for years the tenants thereof, with Burset as the landlord and agent. The consideration of fifteen thousand dollars alleged to have been paid, on the delivery of the deed to Palmer, it is admitted in the pleadings was not one-half the value of this tract. The testimony discloses that the entire proceeds were not paid to Palmer, the holder of legal title of land in the possession of Burset,

but that five thousand dollars of this consideration was paid to Rafael Lopez Landron for a pretended legal fee or charge for services rendered to his client Manuela Gutman in the drawing of the remarkable paper called a private agreement, which gave rise to this, equally remarkable controversy. This extraordinary fee was paid by defendant Burset who never appeared as a witness throughout the entire hearing, although in attendance at court, contenting himself with the denials in the answer filed to the bill to refute charges implicating him. No testimony tending to show that Landron was ever the attorney of defendant Burset or earned the five thousand dollars for services in the proceedings heretofore mentioned, appeared on the hearing. The fact of the payment of so large a sum of money by Burset indicates that whilst nominally Rafael Lopez Landron was attorney for Manuela Gutman, he was, in point of fact, using his position to successfully vest the title to this valuable property of complainant in Victor Burset, the defendant. The payment appears to be a reward for these services. Attorney Cuadra, whom complainant accuses in her testimony of so basely betraying her, earned compensation from Burset for his valuable services to the same end.

The title thus acquired by Garzot & Fuertes by the deed from Palmer, and which Burset directed him to make, is assailed by complainant on two grounds: First, that the purchasers had
963 actual notice before purchasing by reason of their intimacy with Burset and their frequent meetings, and also from the visits and inspection by one of defendants of the records in the Registrar's office of Humacao, and all the circumstances generally, as to the state of the title; and, secondly, the legal notice before purchasing of a *lis pendens* decree in the proceedings of the complainant in the District Court of Humacao to set aside for fraud the so-called "private agreement"—the foundation of the title of the said purchasers.

In answer to this, the laws of Porto Rico were offered by defendant's counsel as constituting a complete bar to any question affecting said title of the purchaser as a third party, to the three hundred and fifty acres of Naguabo lands, transferred to Garzot & Fuertes. This law expressly provides that a third party becoming a purchaser of real estate without notice of any defect or cloud on the record, takes a perfect, incontestable title, freed from any such defects or imperfections, although it may afterwards appear that fraud may have occurred in prior conveyances, and accordingly, that no actual notice *off* the record can, under said law, have any influence to affect or prejudice the title of a third party, as defendants Garzot & Fuertes are in the present case. However, this may be as a question of the law of Porto Rico being administered in the law side of this Court. It can have no weight on the equity branch of the Court. Equity has always asserted the right and duty to investigate and set aside charges of fraud wherever occurring and to thereby prevent the triumph of fraud of any kind. The most solemn proceedings, judgments, and decrees of courts are set aside by courts of equity for fraud of the parties in securing the jurisdiction or the decree of the court.

The deed in question from Palmer, Fraudulent grantee, to Garzot & Fuertes, if accepted by them with actual or constructive notice of the fraud of Burset and Palmer, or either of them in a
964 court of equity would be fatal to the integrity of such a conveyance. The imperative provisions of the statute of Porto Rico, making the title to the same incontestable for fraud, once the title is passed to a third party, must therefore be held to have no application in a court of equity. The mistake, negligence or other cause of the failure of the Registrar to properly annotate or to properly record said *lis pendens* decree of the District Court of Humacao, it was urged, inured to defeat complainant's title and to cause it to become vested in the defendants Burset and Palmer. Complainant having secured said decree of *lis pendens* and caused it to be filed in the Registrar's office, had discharged her whole duty and cannot be divested of her title by failure of the Registrar to obey the mandatory decree of the court directing same to be properly annotated by the Registrar on records under his care.

It is ordered therefore that a decree be prepared in accordance with the foregoing opinion, and also Findings of Fact and Conclusions of Law governing same.

(Signed) CHAS. F. McKENNA, *Judge.*

965 *Finding of Facts and Conclusions of Law.*

Filed April 21, 1900, as of Feb. 19, 1906.

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Finding of Facts.

The Court finds from all the evidence produced herein, and after a consideration of the pleadings and the arguments made, the following facts:

(1) It finds that the citizenship and residence of the parties are as alleged in the bill of complaint.

(2) José Maria Rios, Sr., the father of complainant Maria Rios, died in the year 1875 in Porto Rico, leaving surviving him his widow, Manuela Gutman, and his three children, to-wit, complainant Maria Rios, Petronila Rios de Noya, and José Maria Rios, second.

(3) At the time of his death the said José Maria Rios, father of complainant, was the owner in his own right and as his own separate estate (having acquired the same by inheritance from his father and mother) of a considerable number of properties situated in what is known, and what has been referred to in the progress of this case, as the District of Naguabo in Porto Rico.

The said properties are as follows:

A rural estate known by the name of "Islote" or "Islote Rivalta," composed of one hundred and fifty (150) cuerdas of first class land,

equivalent to fifty-eight (58) hectares, ninety-six (86) ares, situated in the barrio of Rio Abajo in the jurisdiction of Naguabo; bounded on the north by a branch of the Rio Abajo, known as Rio Viejo, which separates it from the lands of Mr. Juan Buso, now Mr. Juan Garzot; on the east by the same Rio Viejo, which separates it
966 from a lot known as the "Ramirez" lot, belonging to Manuela Gutman, widow of Bustelo, as far as the junction of the mentioned branch with the Rio Blanco Moderno; on the south by the Rio Blanco Moderno, which separates it from other lands of Mr. Pilar Ojoa, who has succeeded in its ownership; and on the west by lands belonging to Mr. Cristino Lebrón and the Succesión of Don Ramón Argueso, from a bamboo at the edge of the Rio Blanco to the junction of a ditch with the already mentioned Rio Viejo.

Another tract of land contiguous to the one above mentioned, known by the name of "Cerca de Ramirez," composed of three hundred and fifty (350) cuerdas and five hundred and thirty-five one thousandths, equivalent to one hundred and thirty seven hectares and seventy seven (77) of first class land in the greater part, situated in the said barrio of Rio Abajo; bounded on the north by lands belonging to Mr. Juan Busó and others, denominated San Francisco," which formerly belonged to Mr. Poncio Busó; on the east by lands of Don José Perez Vilamil, now of Don Prudencio Barriola, separated by a ditch, formerly belonging to Mr. Francisco Busó, by lands belonging to Mr. Juan Garzot and Mr. Ramon P. Vilamil, formerly belonging to Don Francisco Busó, to near the mouth of the Rio Blanco; on the south by the Rio Blanco which separates it from the estates of José del Carmen Borges and those of Don Prudencio Barriola, and the property known as "El lugar de los puentes" belonging to Mrs. Manuela Gutman, widow of Bustelo, and on the west by the Rio Blanco, which separates it from the land called "Madam Duran," belonging to the said Mrs. Manuela Gutman, and from lands belonging to the succesión de Don Ramón Argueso, formerly owned by Mr. Pedro Lebron, and also by a part of the branch of the Rio Viejo which separates it from the "Islote" known as "Rivalta," belonging to Mrs. Manuela Gutman.

Another tract of land known as "Madam Duran," composed of one hundred and seven cuerdas and four hundred and sixty eight one thousandths, equivalent to forty two (42) hectares and twenty four (24) ares of land and woods situated in the said barrio of Rio Abajo in the jurisdiction of Naguabo, bounded on the north by the Rio Blanco, which separates it from the "Cerca de Ramirez" belonging to Mrs. Manuela Gutman and by part of the lands owned by Mr. Pedro Lebron, and on the west partly by the said Rio Blanco which separates it from the said "Cerca de Ramirez" and partly by lands owned by Mr. Juan Busó, and on the west by lands owned by the Sucesión Argueso," formerly by Don Pedro Lebrón.

Another rural property named "Los Puentes," situated in the same barrio of Rio Abajo in the jurisdiction of Naguabo, composed of thirty six cuerdas and two hundred and twenty three one thousandths, equivalent to fourteen (14) hectares and twenty three (23)

ares of level land in the greater part, which is traversed by
967 a road, bounded on the north by lands owned by Mr. Juan Busó and the Rio Blanco, which separates it from the "Cercado Ramirez" belonging to Mrs. Manuela Gutman; on the east by the said Rio Blanco, dividing line between the "Cercado Ramirez" of Mrs. Manuela Gutman and lands owned by Mr. Francisco Busó, vertez with the river Anronio Ruiz, and on the west by the lands of Mr. Juan Busó which form an angle with the river Antonio Ruiz.

Another rural property named "Cercado de Torres" and also known as Maizales, "containing two hundred and twenty three (223) cuerdas and one hundred and forty one thousandths, equivalent to eighty seven (87) hectares and seven hundred and twelve ares of first class land and highland situated in the barrio of Rio Abajo in the jurisdiction of Naguabo; bounded on the north by lands owned by Jesus L. Pereyó, formerly by Esteban Garriga; on the east by lands of the said Pereyó owned by Garriga; on the south by the property known as "Islote Quiñones," from which it is separated by the river, and also by lands owned by the Sucesión Rios y Berrios," the Rio Blanco intervening; and on the west by the Rio Blanco which separates it partly from lands owned by Mr. Arturo Gallardo and Mr. Ramón Villamil, formerly belonging to Eladio Saldaña.

Another tract of land known as the "Cercado Maldonado," situated in the same barrio of Rio Abajo, in the jurisdiction of Naguabo, composed of thirty eight (38) cuerdas and one hundred and ninety one thousandths, equivalent to thirteen (13) hectares and eight hundred and thirty two (832) ares of low land; bounded on the north by lands owned by Mr. Jesus L. Pereyó, formerly belonging to Rodulfo Maldonado; on the east by a creek which separates it from lands belonging to the Sucesión de Ramón Argueso, formerly owned by Mr. Cecelio Rodriguez; on the south by the Rio Viejo, which separates it from the property known as the "Islote Quiñones," owned by Mrs. Manuela Gutman, and on the west by a creek which separates it from the lands of the "Cercado de Torres," owned by the said Mrs. Manuela Gutman.

Another tract of land known as "Islote Quiñones," situated in the barrio of Rio Abajo, in the jurisdiction of Naguabo, composed of eighty eight (88) cuerdas and ninety five one thousandths, equivalent to thirty four hectares and six hundred and twenty eight (628) ares of low land; bounded on the north by the Rio Viejo, which separates it from the "Cercado Maldonado" and the "Cercado de Torres," belonging to Mrs. Manuela Gutman; on the east by lands owned by the Sucesión de Don Ramón Argueso, formerly by Don Cecilio Rodriguez and to-day by Mrs. Carmen Fuertes; on the south by the Rio Blanco which separates it from lands owned by the Sucesión de Don José Rios y Berrios, and on the west by the said Rio Blanco, the hacienda Mulas, and "Cercado de Torres."

968 (4) The court finds that Manuela Gutman, the widow, took possession of all the estate both real and personal of the said José María Rios, Sr., her husband, immediately upon his death, and during the period of approximately twenty five years, and until

shortly before the time of her death, continued the sole administration of the same without rendering accounts to the children above mentioned, heirs of the said José Maria Rios, Sr., and without having made a settlement as guardian of the said children or as executrix of the said estate, having paid or delivered to complainant only a nominal sum on account of her inheritance, and having made no partition of the inheritance or estate prior to her death.

(5) The court finds that within approximately two years after the death of her said husband José Maria Rios, Manuela Gutman, his widow, married one Miguel Bustelo, and by him had five children, among them a daughter who married defendant Burset, and another daughter who married a son of Defendant Palmer.

(6) The court finds that on the 7th day of November, 1887, the son, José María Rios, second, died intestate, and without having married, and leaving no issue.

(7) Complainant María Rios and her sister Petronila Rios de Noya, both attained their majority and were respectively married some years prior to the death of Manuela Gutman, the mother, whose death occurred in the month of June, 1902.

The court finds that complainant María Rios has at no time transferred or relinquished her title, interest or estate in and to the property real, personal and mixed of her deceased father, and that upon the death of the brother of complainant, the said José María Rios, second, his one-third interest in the estate was taken possession of and used by Manuela Gutman in usufruct as *bienes reservables* (remainder over to the children of the first marriage).

969 The court finds that upon the death of the son, José María Rios, second, Manuela Gutman was and remained in possession of, and enjoyed, as if it were her own, the entire property, assets and estate belonging to the deceased José María Rios, first, at the time of his death.

(6) The court finds that at the time of the death of José María Rios, first, the husband of Manuela Gutman, there was no so-called community property, nor profits therefrom, but that the entire interest of the said Manuela Gutman in the estate of her said husband at the time of his death amounted to the sum of eight thousand pesos current money of the time, and no more; and the court finds that the said Manuela Gutman during the long course of her administration collected and applied to her own use a sum greatly in excess of this amount, and no proof has been offered before this court which would justify it to make an allowance to her on any account, although some reference has been made in the evidence and arguments to expenses or debts connected with the administration of the estate which were claimed to have been paid by the said Manuela Gutman. But as there is no claim made by defendants for an accounting or affirmative relief upon this score no competent testimony has, or could be, offered upon this subject. The court therefore finds that no sums of money were paid by her out of her own resources; but, on the contrary, the court does find that until her death Manuela Gutman enjoyed not only the usufruct to which she was by law entitled as widow of her deceased husband, and the "bienes reserv-

ables," (as heir with remainder over of her deceased son), but that she also used and applied to her own use the proceeds and profits of the entire estate, the greater part of which belonged to the surviving daughters, complainant herein, and her sister Petronila Rios de Noya, defendant.

But although complainant has asked for an accounting
970 upon this score, such accounting has not been by her and her solicitors pressed during the progress of this case, and therefore, the court does not consider the same for the purpose of awarding a money decree in favor of complainant.

(9) The court finds that the so-called "private agreement" of January 16th, 1901, referred to in the bill of complaint, was fraudulently and collusively drawn, and the signature of complainant obtained thereto by the misrepresentations of her attorney José María Cuadra, and of the attorney for Manuela Gutman, Don Rafael Lopez Landrón; that there was no consideration for the said agreement paid or given to complainant, and that she was deceived by the said Cuadra and Lopez Landron as to its contents, the said deception and misrepresentation being material and relevant as to the effect and purport of said agreement and the interest which she, the said complainant, was supposed to release to the said Manuela Gutman.

The court finds that at the time of the execution of the said private agreement complainant had a one half interest in the entire estate of her deceased father including the properties both in the Humacao and Naguabo districts, subject only to the life interest or usufruct of the said Manuela Gutman, as widow, to the one-fourth part of the said estate of her husband, and subject to a life interest or usufruct of the one-third part thereof previously belonging to the son José María Rios, second.

(10) The court finds that complainant became aware of the misrepresentation and deception practiced upon her in connection with the said so-called private agreement within a day or two thereafter, and that she promptly repudiated the same and refused to sign any deed or public document of any kind or character required by the recording laws of Porto Rico to carry the said private agreement into force and effect. And the court finds that the so-called "private agreement" was not executed before a notary public or with
971 any of the formalities required by the law of Porto Rico to make the same enforceable by specific performance or subject to record for the transfer of real estate or any interest therein, or for the relinquishment of an inheritance.

(11) The court finds that within two or three days after the execution of such private agreement complainant notified her attorney José María Cuadra, at the time also attorney for all parties, that she had been deceived and had not agreed to transfer to Manuela Gutman her dominion title in the properties in the district of Naguabo as in the said private agreement was undertaken to be done; and that he had no authority from her to that end, and then she then and there terminated his employment as her attorney, and repudiated the said so-called "private agreement."

Thereafter, contrary to complainant's instructions, and in fraud

of her interests, the said José María Cuadra joined with Rafael Lopez Landron, attorney for Manuela Gutman, and fraudulently, in the name of complainant, instituted the co-called "expediente de dominio" or proceedings to have the title to the Naguabo properties registered in favor of Manuela Gutman; but the court finds that this proceeding had not been authorized by complainant, but the same was surreptitiously and fraudulently instituted and carried on by the said Cuadra and Lopez Landron collusively for the benefit of Manuela Gutman, and also to secure by said fraud and misrepresentations the district court of Humacao to exercise jurisdiction.

(12) The court further finds that the declaration of *dominio* rendered through the fraud of defendants by the district court of Humacao, and as set forth in the bill of complaint, was obtained by the collusion of the parties as aforesaid, and that the said proceedings to divest the title or interest of complainant in and to the properties, the subject of this suit, which she had acquired by operation
972 of law as heir of her deceased father, and of her deceased brother in remainder, (as "bienes reservables") were carried on as *ex parte* proceedings under the "jurisdición voluntaria" (voluntary jurisdiction) of the district court of Humacao, and no judgment has been rendered divesting complainant of her title or right in the inheritance of her said father and brother in any action or suit at law under the "jurisdición contenciosa" (contentious jurisdiction) of said court or any other court, in an ordinary action whose judgment could have the force and effect of *res adjudicata* by the laws of Porto Rico.

(13) The court finds that in the appeal to the Supreme Court of Porto Rico of complainant from the declaration of dominio in the said proceedings in the district court of Humacao, in which jurisdiction of said court was obtained by the fraud of the parties defendant, the merits of the case were not considered, but that the Supreme Court of Porto Rico at that time was a court of cassation (casación), and because that court, as stated in its opinion, considered the said appeal to have been improperly brought in matter of *procedure*, when it should have been for substantive law, it dismissed the same.

The court therefore finds that no court has rendered a final opinion or decision upon the merits of the questions involved in this case, and the defense of *res adjudicata* set up in the pleas and answers has not been sustained.

(14) The court finds that although the object of the present suit is to recover one-half interest by complainant in the lands above described lying in the district of Naguabo, that she has also a right to a one-half interest in all the lands in the district of Humacao, although defendants now recognize her interest and title in one-half of the lands in said district of Humacao. But as complainant does
973 not accept the provisions of the so-called "private agreement," and as this court holds the same to have been fraudulent and void, the decree in this case must extend to the properties both in the districts of Humacao and Naguabo, and the decree will establish the interest and title of complainant to one-half therein, and the same will be recorded in the registry of property by virtue of and under

this decree, and the previous inscriptions in the registry of property based upon the said private agreement are found to be in accordance with the said fraudulent design of the parties as set forth in the bill of complaint, and the same will be cancelled but with respect to the title and interest of complainant to one-half of the Humacao properties no further decree is made than to declare that at the time of the death of Manuela Gutman, complainant was entitled to one-half thereof.

(15) The court does not consider the case required a reference to a master to ascertain the profits, for the reasons hereinbefore expressed.

The court finds that all of the transfers, as set forth in the bill of complaint, of the said property or any part thereof, as against the one-half interest of complainant in and to all of the said properties, including the deed from defendant Palmer to defendants Garzot & Fuertes, and all of the said deeds, transfers, mortgages and inscriptions in the registry of property which affect in any way the one-half interest of complainant in and to any and all of the said properties, were made without consideration and were simulated, and that the same were made by the collussion of Manuela Gutman, Victor Burset, José María Cuadra, Santiago R. Palmer and Lopez Landron for the purpose of defeating the rights and title of complainant; and the court finds that Garzot & Fuertes purchased "Cercado Ra-
974 mirez" with actual and constructive notice of the rights and title of complainant and of the fraudulent conspiracy aforesaid, and that they paid therefore less than one-half of its real value; and therefore all the said transfers are null and void as against complainant's one-half interest.

Conclusions of Law.

Upon the death of the said José María Rios, Sr., the title and dominion to the said properties in the district of Naguabo therefore, by the law then in force, passed to and in his surviving children, the complainant María Rios, defendant Petronila Rios de Noya, and his son José María Rios, second, subject to the widow's "cuota marital" or marriage portion of the widow, Manuela Gutman, which was one-fourth of the usufruct of the said estates in the district of Naguabo during the life of the said Manuela Gutman, or until she should contract second nuptials.

From the evidence in the case the court finds as a conclusion of law that the said properties in the district of Naguabo did not enter into or form a part of the conjugal society, and that therefore the said widow Manuela Gutman was not entitled to any profits or interest therein.

And the court finds as a conclusion of law that upon the death of the son José María Rios, second, the dominion and title of his one-third interest in the estate of his father José María Rios, Sr., passed to his mother Manuela Gutman in the character of "Bienes reservables" (contingent remainder) subject to be defeated upon the subsequent nuptials of the said Manuela Gutman.

Upon the subsequent marriage of the said Manuela Gutman, the court therefore finds as a conclusion of law that the title and
975 interest which had passed to her from her said son in and to the one-third part of the said estate, became, and was, defeated, and the same became, by operation of law, then and there vested in the surviving children, complainant María Rios and defendant Petronila Rios de Noya in and to the said properties in the district of Naguabo described in the bill of complaint.

The court finds further as a conclusion of law that the said Manuela Gutman did not have at the time of her death any claim or right of action against complainant or against any part of the interests of complainant in and to her interest as surviving heir of her said father in the said properties in the district of Naguabo aforesaid by reason of any of the matters, facts or things set forth and alleged in the answers respectively filed by the defendants in this cause.

The court concludes further that the so-called private agreement of January sixteenth, nineteen hundred and one, referred to in the bill of complainant, was fraudulently and collusively obtained by deception and fraud practiced upon her by her attorney José María Cuadra, by the attorney Rafael Lopez Landron, attorney for Manuela Gutman and Petronila Noya, by Francisco Noya, the husband of the latter, and by Manuela Gutman; who misrepresented to complainant the contents of the said so-called private agreement and the effects thereof; and by reason of the confidential relation existing between said complainant and her said attorney José María Cuadra she was induced, contrary to her true interests, to sign the said *do*-called private agreement.

The court concludes that there was no consideration for the execution of the said private agreement paid or given to the complainant, and that she was deceived by said Cuadra and Lopez Landron as to the contents thereof, and the said deception and misrepresentation were material and relevant as to the effect thereof and the
976 interest which she, the said complainant, was supposed to release to the said Manuela Gutman.

The court further finds that as a matter of law complainant could not divest her rights in and to the one-half of the inheritance of her said father by any private agreement, and that as the proof shows that she has not executed any public instrument or document transferring the same, and that no valid decree or judgment has been rendered against her for this purpose, she is now the legal owner of the one-half interest in and to the said properties in the district of Naguabo aforesaid.

The court further finds that the so-called *expediente de dominio* or summary proceedings for the declaration of title in favor of Manuela Gutman carried on in the district court of Humacao were instituted by the fraud and deception of the said José María Cuadra and Rafael Lopez Landron without the knowledge or consent of the complainant, and in pursuance of a conspiracy entered into theretofore between the said Cuadra and Landron for the purpose of wrongfully and fraudulently depriving complainant of her interest and

title in and to the said one-half of the properties in the said district of Naguabo.

The court further concludes as a matter of law that the district court of Humacao was without jurisdiction to divest complainant of her one-half interest in and to the said properties in the district of Naguabo, and that therefore the so-called declaration of *dominio* in favor of Manuela Gutman was null and void and without force or effect.

The court further finds that, as a matter of law, neither the Supreme Court of Porto Rico, nor any other court, has passed upon the merits of these questions; and the Supreme Court of Porto
977 Rico in the so-called appeal prosecuted by complainant from the declaration of the district court of Humacao aforesaid only dismissed the appeal because the said court was at that time a court of cassation and not of appeal, and because the appeal taken by complainant was based upon alleged errors of procedure rather than substantive law, and for that reason the Supreme Court of Porto Rico refused to enter into a consideration of the merits of the case.

The court therefore finds as a conclusion of law, that the pleas of *res adjudicata* presented by defendants herein are not sustained and are without merit.

The court therefore finds as a matter of law that complainant is entitled to a one-half interest in and to all of the said properties in the district of Naguabo hereinabove described.

The court concludes as a matter of law from the findings of fact herein that the following transactions set forth in the bill of complainant were null and void, to wit:

The inscription in the registry of property in favor of Manuela Gutman of the title to the said properties in the district of Naguabo; the transfer by Manuela Gutman of the said properties to defendant Victor Burset and the inscription thereof in the registry of property; the execution by the said Victor Burset of the alleged mortgage to Guillermo Ygarividez Landron and the inscription thereof in the registry of property; the transfer by defendant Victor Burset to defendant Palmer of the said properties and the inscription thereof in the registry of property; the transfer by defendant Palmer to defendant Petronila Rios de Noya of the one-hundred acres described in the bill of complaint and the inscription thereof in the registry of property; the transfer by defendant Palmer to defendants Garzot & Fuertes of the three hundred and fifty acres known as "Cercado Ramirez," and the inscription thereof in the registry of property.

The court further finds as a matter of law that complain-
978 ant is entitled as against defendants to all of the costs incurred in the prosecution of this suit, including fees and costs of examiners to whom this cause has been referred for the taking of testimony.

San Juan, Porto Rico, April twenty-first, nineteen hundred and six, *nunc pro tunc* as of February nineteenth, nineteen hundred and six.

(Signed) CHAS. F. McKENNA, *Judge.*

979 *Final Decree.*

Filed and Entered April 21, 1906, as of Feb. 19, 1906.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Decree.

The above cause having been submitted to this court, together with all the evidence taken therein, pleadings orders and proofs of every kind, and the arguments of counsel, Francis H. Dexter, Willis Sweet and Juan Vias Ochoteco appearing for the complainant, and N. B. K. Pettingill and Juan Hernandez Lopez appearing for the defendants; and the court being now sufficiently advised in the premises, and having prepared and submitted herewith its findings of fact and conclusions of law; therefore, in accordance therewith, on this the nineteenth day of February, nineteen hundred and six, it adjudges, orders and decrees as follows:

I.

Upon the death of José María Rios, father of complainant, in the year eighteen hundred and seventy-five he left, among others, the following properties which belonged to his separate and individual estate, having acquired the same by inheritance from his parents, to wit:

980 A rural estate known by the name of "Islote" or "Islote Rivalta," composed of one hundred and fifty (150) cuerdas of first class land, equivalent to fifty eight (58) hectareas, ninety six (96) ares, situated in the barrio of Rio Abajo in the jurisdiction of Naguabo; bounded on the north by a branch of the Rio Abajo, known as the Rio Viejo, which separates it from the lands of Mr. Juan Busó, now Mr. Juan Garzot; on the east by the same Rio Viejo which separates it from the lot known as the Ramirez lot, belonging to Manuela Gutman, widow of Bustelo, as far as the junction of the mentioned branch with the Rio Blanco Moderno; on the south by the Rio Blanco Moderno, which separates it from other lands of Mr. Pilar Ojoa, who has cucceeded in its ownership; and on the west by lands belonging to Mr. Christino Lebron and the Sucesión de Don Ramon Argueso, from a bamboo at the edge of the Rio Blanco to the junction of a ditch with the already mentioned Rio Viejo.

Another tract of land contiguous to the one above mentioned, known by the name of "Cerca de Ramirez" composed of three hundred and fifty (350) cuerdas and five hundred and thirty five one thousandths, equivalent to one hundred and thirty seven hectares and seventy-seven (77) one thousandths of first class land in the greater part, situated in the said barrio of Rio Abajo; bounded on the north by lands belonging to Mr. Juan Busó and others, denomi-

nated "San Francisco," which formerly belonged to Mr. Poncio Busó; on the east by lands of Don José Perez Villamil, now of Don Prudencio Barriola, separated by a ditch, formerly belonging to Mr. Francisco Busó, by lands belonging to Mr. Juan Garzot and Mr. Ramón P. Villamil, formerly belonging to Don Francisco Busó, to near the mouth of the Rio Blanco; on the south by the Rio Blanco which separates it from the estates of José del Carmen Borges and those of Don Prudencio Barriola, and the property known as "El lugar de los Puentes" belonging to Mrs. Manuela Gutman, widow of Bustelo, which and on the west by the Rio Blanco, which separates it from the land called "Madam Duran," belonging to the said Mrs. Manuela Gutman, and from lands belonging to the Sucesión de Don Ramón Argueso, formerly owned by Mr. Pedro Lebron, and also by a part of the branch of the Rio Viejo which separates it from the "Islote" known as "Rivalta," belonging to Mrs. Manuela Gutman.

Another tract of land known as "Madam Duran," composed of one hundred and seven cuerdas and four hundred and sixty eight one thousandths, equivalent to forty two (42) hectares and twenty four (24) ares of land and woods situated in the said barrio of Rio Abajo in the jurisdiction of Naguabo, bounded on the north
981 by the Rio Blanco which separates it from the "Cerca de Ramirez" belonging to Mrs. Manuela Gutman and by part of the lands owned by Mr. Pedro Lebrón, and on the west partly by the said Rio Blanco which separates it from the said "Cerca de Ramirez" and partly by lands owned by Mr. Juan Busó, and on the west by lands owned by the Sucesión Argueso," formerly Don Pedro Lebron.

Another rural property named "Los Puentes," situated in the same barrio of Rio Abajo in the jurisdiction of Naguabo, composed of thirty six cuerdas and two hundred and twenty three one thousandths, equivalent to fourteen (14) hectares and twenty-three (23) ares of level land in the greater part, which is traversed by a road; bounded on the north by lands owned by Mr. Juan Busó and the Rio Blanco, which separates it from the "Cercado Ramirez" belonging to Mrs. Manuela Gutman; on the east by the said Rio Blanco, dividing line between the "Cercado Ramirez" of Mrs. Manuela Gutman and lands owned by Mr. Francisco Busó, vertex with the river Antonio Ruiz, and on the west by the lands of Mr. Juan Busó which form an angle with the river Antonio Ruiz.

Another rural property named "Cercado de Torres" and also known as "Maizales," containing two hundred and twenty three (223) cuerdas and one hundred and forty one thousandths, equivalent to eighty seven (87) hectares and seven hundred and twelve ares of first class land and high land situated in the barrio of Rio Abajo in the jurisdiction of Naguabo; bounded on the north by lands owned by Jesus L. Pereyó, formerly by Esteban Garriga; on the south by the property known as "Islote Quiñones," from which it is separated by the river, and also by lands owned by the Sucesión Rios y Berrios, the Rio Blanco intervening; and on the west by the Rio Blanco which separates it partly from lands owned by Mr. Arturo Gallardo and Mr. Ramón Vallamil, formerly belonging to Eladio Saldaña.

Another tract of land known as the "Cercado Maldonado," sutiated in the same barrio of Rio Abajo, in the jurisdiction of Naguabo, composed of thirty-eight (38) cuerdas and one hundred and ninety one-thousandths, equivalent to thirteen (13) hectares and eight hundred and thirty two (832) ares of low land; bounded on the north by lands owned by Mr. Jesus L. Pereyó, formerly belonging to Rodolfo Maldonado; on the east by a creek which separates it from lands belonging to the Sucesión de Ramón Argueso, formerly owned by Mr. Cecilio Rodriguez, on the south by the Rio Viejo, which separtes it from the property known as the "Islote Quiñones" owned by Mrs. Manuela Gutman, and on the west by a creek which separates it from the lands of the Cercado de Torres, owned by the said Mrs. Manuela Gutman.

982 Another tract of land known as "Islote Quiñones, situated in the barrio of Rio Abajo, in the jurisdiction of Naguabo, composed of eighty eight (88) cuerdas and ninety five one thousandths, equivalent to thirty four hectares and six hundred and tewty eight (628) ares of low land; bounded on the north by the Rio Viejo, which separates it from the "Cercado Maldonado" and the "Cercado de Torres," belonging to Mrs. Manuela Gutman; on the east by lands owned by the Sucesión de Don Ramón Argueso, formerly by Don Cecilio Rodriguez and to-day by Mrs. Carmen Fuertes; on the south by the Rio Blanco which separates it from lands owned by the Sucesion de Don José Rios y Berrios, and on the west by the said Rio Blanco, the hacienda Mulas, and Cercado de Torres.

II.

At the time of the death of the said José María Rios, Sr., his widow, Manuela Gutman, was not entitled to any interest in the said properties by virtue of the conjugal society or otherwise, and had no claim against her said husband or his estate by virtue of said conjugal society or otherwise.

III.

Upon the subsequent marriage of Manuela Gutman she ceased to have any interest in the said properties or the usufruct thereof by way of marital portion (cuota marital) or in any other manner whatsoever, as widow of the said José María Rios.

IV.

Upon the death of the son José María Rios, second, his one-third interest in the said properties vested absolutely in complainant María Rios and her sister Petronila Rios de Noya, sole surviving children of José María Rios and of Manuela Gutman by the first marriage of the latter, the said Manuela Gutman having married one Don Miguel Bustelo subsequent to the death of her first husband and prior to the death of the said son.

983 V.

Upon the death of the said son José Maria Rios, second, the right, title and interest in and to all of the property hereinbefore described became vested, by operation of law, in equal parts in complainant

María Rios and her said sister, defendant Petronila Rios de Noya, free from all claims whatsoever of the said Manuela Gutman.

VI.

The so-called private agreement of January sixteenth, 1901, being null and void because of the fraud and deception practiced upon complainant, the same is hereby cancelled and annulled, and the defendants or either of them, that may have copies of the same signed by complainant are ordered and adjudged to produce the same before the clerk of this court immediately in order that the same may be destroyed by him.

984

VII.

The dominion proceedings (expediente de dominio) carried on in the district court of Humacao, and the declaration therein made by the said district court of Humacao on the sixteenth day of November, 1901, declaring the title of the foregoing properties in and to the said Doña Manuela Gutman, are hereby declared to be null and void, because said declaration was obtained by the fraud and collusion of Rafael Lopez Landron, attorney for Manuela Gutman, and José María Cuadra, attorney for complainant, to the prejudice of complainant, and because the said district court of Humacao was without jurisdiction in the said proceeding to divest the title of complainant in and to one-half of the said properties from her and to transfer the same to Doña Manuela Gutman.

VIII.

The said declaration of the sixteenth of November, 1901, of the district court of Humacao in the said dominion proceedings, and the judgment of the Supreme Court of Porto Rico of the fourth day of June, 1902, on the appeal from the said declaration of dominion, are ordered adjudged and decreed not to have the force or effect of *res adjudicata,* as not having adjudged the matters in controversy herein.

The inscriptions in the registry of property of the said dominion proceedings and of the said judgment of the Supreme Court of Porto Rico are hereby declared to be null and void as against
985 complainant; and the Registrar of Property of Humacao will forthwith make the proper entry of the cancellation thereof in so far as concerns complainant's interest in and to all of the properties hereinabove described.

IX.

The court further orders, adjudges and decrees that as to the one-half interest of complainant in and to the properties hereinbefore described, the following transfers and sales, and the mortgage hereinafter described, were and are null and void as being without legal force or effect to transfer the interest of complainant and because the same were executed in fraud of her rights, to-wit:

Deed and sale of said properties, executed by Manuela Gutman to

Victor Burset on the thirtieth day of April, 1902, before the notary Herminio Diaz.

Mortgage executed by defendant Victor Burset to Guillermo Ygarravidez Landrón on July first, 1902, before the notary Herminio Diaz;

Deed and sale by defendant Victor Burset to Santiago R. Palmer on July sixth, 1902, before the notary Herminio Diaz.

Deed and sale by defendant Santiago R. Palmer to defendants Garzot & Fuertes of the three hundred and fifty acres known as "Cercado Ramirez," on August 26th, 1902, before the notary Santiago R. Palmer, defendant herein. As to this deed and sale the court orders, adjudges and decrees that Garzot & Fuertes purchased with actual notice, as well as constructive notice contained in the registry of property, of the rights and interests of complainant in and to the said property, and of a suit previously instituted by her in the district court of Humacao to set aside the declaration of dominio hereinbefore referred to.

986 Deed and sale executed by defendant Santiago R. Palmer to defendant Petronila Rios de Noya on the twenty-first day of November, 1902, for the one hundred acres known as "Islote Quiñones" above described.

The court orders, adjudges and decrees that all of said transfers, and the said mortgage, were and are fraudulent and void as against this complainant, as also the inscriptions made respectively thereof in the registry of property of Humacao; and the Registrar of Property of Humacao is ordered forthwith to cancel by proper annotations in the books of his office the said inscriptions and the effect thereof in so far as related to the one-half interest of complainant in and to the said properties.

X.

The court orders, adjudges and decrees that complainant María Rios is the legal owner of an undivided one-half interest in and to all of the foregoing properties above described, and the Registrar of Property of Humacao, in which district the said properties are situated, is hereby ordered forthwith to enter in the books of his office the proper inscriptions to that effect.

XI.

It is hereby ordered, adjudged and decreed that complainant recover all of the costs of this case, including fees or compensation to masters, examiners and notaries public for the taking of evidence herein.

This final decree was directed by order and opinion delivered in open court on February nineteenth, 1906, to be prepared for
987 submission to the court and counsel; but through the many occupations of the court its consideration was necessarily delayed for final signing and entry until this twenty-first day of April, 1906, and it is accordingly ordered and decreed to be dated as of February nineteenth, nineteen hundred and six, when opinion was filed and a decree in favor of complainant was announced and formal

order prepared for entry accompanying said opinion recorded on the minutes of court on February nineteenth, 1906.

(Signed) CHAS. F. McKENNA, *Judge.*

988 *Petition of Appeal.*

PARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Petition of Appeal.

The defendants Victor Burset, Petronila Rios de Noya and her husband Francisco Noya, conceiving themselves aggrieved by the order and final decree made and entered in the above entitled cause on this day, wherein and whereby it is ordered, adjudged and decreed that the equities in said cause are in all respects with the complainant and said complainant is granted relief as prayed for in her bill of complaint, do hereby appeal from said order and decree to the Supreme Court of the United States for the reasons specified in the assignment of errors to be filed herein; and they pray that this their petition of appeal may be allowed, and may operate as a supersedeas upon the giving of a bond in a sum to be fixed by the Court, and that a transcript of the record, proceedings and papers upon which said order was made, duly authenticated, may be sent to said Supreme Court of the United States.

Dated this 21st day of April, 1906.

(Signed) FRANK ANTONSANTI,
Solicitor for said Defendants.

989 *Petition of Appeal.*

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Petition of Appeal.

Juan R. Garzot and Faustino R. Fuertes, as co-partners under the firm name of Garzot & Fuertes, two of the defendants in the above entitled cause, conceiving themselves aggrieved by the order and final decree made and entered in the above entitled cause on this day, wherein and whereby it is ordered, adjudged and decreed that the equities in said cause are in all respects with the complainant and said complainant is granted relief as prayed for in her said bill of complaint, do hereby appeal from said order and decree, and especially from that part of the same which holds that these defendants are not *bona fide* purchasers for value of that part of the property involved which is held and owned by them, to the Supreme Court of

the United States for the reasons specified in the assignment of errors to be filed herein; and they pray that this their petition of appeal may be allowed and may operate as a supersedeas upon the giving of a bond in a sum to be fixed by the court, and that a transcript of the record, proceedings and papers upon which said decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 21st day of April, 1906.

(Signed) PETTINGILL & LEAKE,
Solicitors for said Defendants.

990 *Order Allowing Appeal.*

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Order Allowing Appeal, etc.

The defendants Victor Burset, Petronila Rios de Noya and Francisco Noya, by their counsel Frank Antonsanti, and the defendants Juan R. Garzot and Faustino R. Fuertes, as co-partners under the firm name of Garzot & Fuertes, by their counsel N. B. K. Pettingill, having on the 21st day of April, 1906, filed their separate petitions of appeal in this cause, it is now hereby ordered that an appeal to the Supreme Court of the United States from the final decree entered herein be, and the same hereby is, allowed to said defendants; and that a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein, or such as counsel by stipulation may agree upon to constitute the record, be transmitted to said Supreme Court of the United States, but that time for filing such transcript shall be enlarged so as to expire on the 15th day of September, 1906.

It is further ordered that the bonds on appeal be fixed at the sum of Twenty Thousand Dollars ($20,000) for the defendants other than Garzot and Fuertes and the sum of Twelve Thousand Five Hundred Dollars ($12,500) for said defendants Garzot & Fuertes, the same to act as supersedeas bonds and also as bonds for costs and damages on appeal, and that said bonds may be filed within sixty days from this date and may be approved by the Clerk.

Dated at San Juan this 23rd of April, 1906.

(Signed) CHAS. F. McKENNA, *Judge.*

991 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Bond on Appeal.

Know all men by these presents, that we, Garzot & Fuertes (a firm composed of Juan R. Garzot and Faustino R. Fuertes) as Principals and Manuel V. del Valle and Damian Monserrat, as sureties, are held and firmly bound unto Maria Rios de Rubio her executors, administrators or assigns in the full and just sum of Twelve Thousand Five Hundred Dollars, for the payment of which well and truly to be made we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 30th day of May, A. D. 1906.

Whereas, lately at a session of the District Court of the United States for Porto Rico, in a suit pending in said court between the said Maria Rios de Rubio, as complainant, and Victor Burset, Petronila Patricia Rios de Noya, Francisco Noya, Santiago R. Palmer and Garzot & Fuertes, defendants, a decree was rendered against the aforesaid defendants, and said defendants having obtained from said court an order, dated April 23, 1906, allowing an appeal to the Supreme Court of the United States to reverse the decree of the aforesaid court, in which said order the appeal bond of the defendants Garzot & Fuertes was fixed at the sum of Twelve Thousand Five Hundred Dollars,

Now, the condition of the above obligation is such that if the said Garzot & Fuertes shall prosecute their appeal with effect and shall answer all damages and costs that may be awarded against them, if they fail to make their plea good, then the above obligation to be void; otherwise to remain in full force and effect.

(S'g'd) GARZOT Y FURTES. [SEAL.]
MANUEL V. DEL VALLE. [SEAL.]
DAMIAN MONSERRAT. [SEAL.]

991½ UNITED STATES OF AMERICA,
District of Porto Rico, ss:

Personally appeared before me, the undersigned, Clerk of the District Court of the United States for Porto Rico, the above named Manuel V. del Valle and Damian Monserrat, sureties, who signed the foregoing bond, who, after having been sworn by me in due form of law, depose, each for himself, and says that he is worth in visible property, over and above all debts and obligations, the sum of twelve thousand dollars.

MANUEL V. DEL VALLE.
DAMIAN MONSERRAT.

Subscribed and sworn to before me this 30th day of May, 1906.

[Seal U. S. Court.]

H. H. SCOVILLE, *Clerk.*

Suffociency of sureties on the foregoing bond Approved this 21st day of June, 1906.

B. S. RODEY, *Judge.*

992 In the United States District Court for Porto Rico.

Filed Sept. 17, 1906.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Assignment of Errors.

Now come Juan R. Garzot and Faustino R. Fuertes, two of the defendants and appellants in the above entitled cause, and assign the following as the errors committed by the court aforesaid in the course of the proceedings in said cause in said court:

I. The court erred in overruling the demurrer of these defendants filed to the original bill of complaint on August 3, 1903.

II. The court erred in making the order herein dated October 9, 1903, overruling all demurrers and allowing said original bill to be amended.

III. The court erred in allowing, by its order dated March 8, 1904, the filing of the amendment to the bill of complaint tendered after the filing of defendants' pleas.

IV. The court erred in overruling the plea of these defendants by its order of October 7, 1904.

V. The court erred in compelling the defendants to elect whether they would avail themselves of the services of one Rafael Lopez Landron, an attorney of the court, in his professional capacity as a lawyer or as a witness in their behalf; and, after defendants had elected under such compulsion to use said Landron as a witness, in excluding him from the court room where the testimony was being taken, thereby depriving these defendants of one of their chosen counsel.

VI. The court erred in refusing to grant defendants' motion for a decree dismissing the bill at the conclusion of complainant's testimony as a witness in her own behalf.

993 VII. The court erred in overruling defendants' motion to be allowed to controvert the evidence on behalf of complainant on the issue of fraud and to have that issue determined before hearing evidence upon the case at large.

VIII. The court erred in overruling defendants' objection to the admission in evidence of the receipts for rent given by Manuela Gutman to the complainant for a certain plantation called "San José de las Mulas."

IX. The court erred in overruling defendants' objection to the admission in evidence of a certain document of pledge, marked Exhibit J, by the Master.

X. The court erred in overruling the objections of defendants to the question "From your best judgment what was the value of those lands per acre in 1902?" asked of complainant's witness Strayer.

XI. The court erred in overruling defendants' motion, made at the conclusion of all testimony on behalf of complainant, to dismiss her said bill.

XII. The court erred in overruling the motion, made on behalf of these defendants at the close of complainant's case, to dismiss her said bill as to these defendants.

XIII. The court erred in sustaining objections of complainant to the question "What was the reason that the agreement signed the night of the 16th of January was drawn in the shape of a private agreement and not at that time of a public document?" asked of defendants' witness Cuadra.

XIV. The court erred in sustaining the objection of complainant to the admission in evidence of the document offered by the defendants and marked Exhibit 7 for Defendants.

XV. The court erred in sustaining the objection of com-
994 plainant to the admission in evidence of the document offered by the defendants and marked Exhibit 8 for Defendants.

XVI. The court erred in sustaining the objection of complainant to the admission in evidence of the Notarial draft of the private agreement, drawn by Notary Aldrey, marked Exhibit 16 for Defendants.

XVII. The court erred in overruling the objections of defendants to the admission in evidence of the document marked Exhibit Q. for Complainant.

XVIII. The court erred in overruling the objections of defendants to the leading questions asked by complainant of her witness ——, which appear on page 237 of the Report of Magee, Special Master.

XIX. The court erred in overruling objections of defendants to questions asked of complainant as a witness in her own behalf as to how she acquired title to the tract of land known as "Braziles," which appear on pages 242 and 243 of the Report of Magee, Special Master.

XX. The court erred in overruling the objections of defendants to the admission in evidence of the alleged copy of the Entry in Book 11 of Day Book, Folio 124, of the Registry of Property of Humacao, which is marked Exhibit U. for the Complainant.

XXI. The court erred in overruling motion of defendants to strike out that portion of testimony of Vias Ochoteca, a witness for complainant, which referred to a conversation with Francisco Porrata, a witness for defendants, which appears on page 292 of the Report of Magee, Special Master.

XXII. The court erred in overruling the objections of defendants to the admission in evidence of a part of the record of the testamentary proceedings over the estate of José Maria Rios y
995 Berrios, marked Exhibit X. for the Complainant.

XXIII. The court erred in allowing complainant, over the

objection of defendants, to file the amendments to her bill of complaint, tendered in her behalf after the conclusion of the evidence, for the purpose of making same conform to the proofs.

XXIV. The court erred in finding as a fact from the evidence that all the properties described in the finding of fact numbered 3 were inherited by said José Maria Rios y Berrios from his father and mother.

XXV. The court erred in finding as a fact from the evidence, as stated in its 4th finding, that Manuela Gutman had made no partition of the inheritance of her children prior to her death.

XXVI. The court erred in finding as a fact from the evidence, as stated in its 7th finding, that complainant had never transferred or relinquished her title or intestate in any of the property left by her father.

XXVII. The court erred in finding as a fact, as further stated in said 7th finding, that the whole share of José Maria Rios 2nd was "bienes reservables," without finding that same was subject to the claim of his mother Manuela Gutman for her portion of the "gananciales" and for services during the many years of her administration of the estate.

XXVIII. The court erred in finding as a fact, as stated in its 8th finding, that at the death of José Maria Rios 1st there was no community property in which his widow had an interest.

XXIX. The court erred in finding as a fact that the interest of Manuela Gutman in the estate of her deceased husband, José Maria Rios 1st, was 8000 pesos and no more, and that during her administration she applied to her own use a sum greater than the amount of such interest.

996 XXX. The Court erred in finding as a fact, as stated in its 8th finding, that Manuela Gutman applied to her own use all the proceeds and profits of the entire estate of José Maria Rios 1st.

XXXI. The Court erred in finding as a fact, as stated in its 9th finding, that the private agreement of January 16, 1901, was conclusively drawn and the signature of complainant obtained thereto by misrepresentation and deception, and that there was no consideration for the same.

XXXII. The Court erred in finding as a fact that complainant promptly repudiated said private agreement after discovering within a day or two the misrepresentation and deception practiced upon her.

XXXIII. The Court erred in finding as a fact, as stated in said 9th finding, that complainant within two or three days after the execution of said private agreement notified her lawyer, Cuadra, that she had been deceived and repudiated the agreement.

XXXIV. The Court erred in finding as a fact, as stated in its 11th finding, that attorneys Landron and Cuadra conspired to defraud complainant of her interest in her father's estate by the institution of the dominion proceedings.

XXXV. The Court erred in finding as a fact, as stated in its 12th finding, that the declaration of dominion was collusively obtained.

XXXVI. The Court erred in finding as a fact, as stated in its said 12th finding, that said proceedings for the declaration of a dominion title were carried on and concluded as *ex parte* proceedings.

XXXVII. The Court erred in finding as a fact, as stated in its 15th finding, that the conveyances made subsequent to the registry of the title in Manuela Gutman, including the conveyance to these defendants, were without consideration.

997 XXXVIII. The Court erred in finding as a matter of law that the property described in the complainant's bill descended to the children of José María Ríos without subjecting the same to the rights of the widow in the ganancial property.

XXXIX. The Court erred in finding as a matter of law that said properties did not enter into or form a part of the conjugal society, and that said Manuela Gutman had no claim against said property upon the bases set up in the answer of the defendants.

XL. The Court erred in finding as a matter of law that the alleged deception and misrepresentation practiced upon complainant were material and relevant to the determination of her rights.

XLI. The Court erred in finding as a matter of law that the complainant could not divest her rights by a private agreement such as that admitted in evidence.

XLII. The Court erred in finding as a matter of law that the District Court of Humacao was without jurisdiction to devest the complainant of her interest in the properties described in the bill, hence said declaration of dominion was null and void.

XLIII. The Court erred in finding as a matter of law that the Supreme Court did not pass upon the merits of complainant's appeal in said dominion proceedings, but dismissed the same for improper procedure in taking the appeal.

XLIV. The Court erred in finding as a matter of law that the complainant was at the date of said findings entitled to a one-half interest in the properties described in her bill.

XLV. The Court erred in finding as a matter of law that the inscriptions and conveyances specified in said findings were null and void.

998 XLVI. The Court erred in entering a final decree herein in favor of the complainant and against these defendants instead of entering a final decree dismissing complainant's said bill as against them.

XLVII. The Court erred in denying the motion of these defendants to quash the execution for costs issued against them.

Wherefore, these defendants pray the honorable, the Supreme Court of the United States to examine and correct the errors assigned, and for the reversal of the said decrees and orders of said District Court of the United States for Porto Rico entered in the above entitled cause, and for the proper directions to said Court to enter a decree dismissing complainant's bill of complaint.

And as in duty bound, they will ever pray.

JUAN R. GARZOT AND
FAUSTINO R. FUERTES,
By N. B. K. PETTINGILL,
Their Solicitor and Counsel.

999 *Motion to Fix Cost Bond on Appeal.*

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

On Appeal.

Now come the defendants Victor Burset, Petronila Rios de Noya and Francisco Noya, by their solicitor Frank Antonsanti, and represent to the court that they have been unable to comply with the order of this court allowing them a supersedeas to the final order and decree herein upon the filing of a bond in the penal sum of $20,000 and the time within which same could be filed is about to expire.

Wherefore these defendants pray for an order fixing the amount of the bond to be required of them by the court in order that their appeal may be perfected without a supersedeas.

(Signed) FRANK ANTONSANTI,
Solicitor for Said Defendants.

1000 *Order Allowing Appeal of Burset et al. Re Bond.*

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The defendants Victor Burset, Petronila Noya and Francisco Noya having represented to the Court that they are unable to give the supersedeas bond in the amount fixed by the Court, and the time within which such bond might be filed having expired, it is hereby ordered that the appeal of said defendants be allowed upon the filing by them of an appeal bond in the penal sum of Five Hundred Dollars, conditioned according to law, and that the time within which the record shall be filed in the Supreme Court is hereby extended in accordance with the previous order of this Court.

Done and ordered in open court this 1st day of August, 1906.

1001 MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

On Appeal.

To Messrs. F. H. Dexter, Esq., and Willis Sweet, Esq., Solicitor of record for Complainant:

You will please taken notice that the defendants, Garzot & Fuertes, have filed with the Clerk of the Court aforesaid a preacipe for the

making up of the transcript of record in said cause upon appeal to the Supreme Court of the United States, a copy of which is hereto attached for your information.

If you desire any pleadings, proceedings or papers on file, other than those therein enumerated, to be included as a part of said record, you are hereby notified to direct said Clerk as to the same, specifying in such direction the particular pleadings, proceedings or papers desired to be included.

(Signed) N. B. K. PETTINGILL,
Of Counsel for Defendants Garzot & Fuertes.

Service of foregoing notice accepted this 23rd day of August, 1906.

(Signed) FRANCIS H. DEXTER,
Solicitor for Complainant.

1002 *Præcipe for Making Transcript of Record, with Notice.*

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

On Appeal.

To the Clerk of the above-entitled Court:

You will please prepare a transcript of the record in this cause to be filed in the Supreme Court of the United States, under the appeal heretofore perfected to said Court by Garzot & Fuertes, two of the defendants herein; and you will include in said transcript the following pleadings, proceedings and papers on file, to wit:

1. The Original bill of complaint, filed Apl. 30, '03.
2. Demurrer of Garzot & Fuertes to same, filed Aug. 3, 1903.
3. Motion to amend bill, filed Oct. 6, 1903.
4. Order overruling demurrers, allowing amendment and requiring bill as amended to be re-drawn, dated Oct. 9, '03.
5. Amended bill, filed Oct. 14, 1903.
6. The several pleas filed to said bill, with the translations of all exhibits filed as part thereof, Nov. 16 & 17, 1903.
7. Motion to amend bill after plea, filed March 8, 1904.
8. Order allowing same, dated Mch. 8, 1904.
9. Setting of pleas for argument, filed March 11, 1904.
9½. Order in Order Book of Mch. 19, 1904.
10. The several answers filed in support of said pleas, March 28 & 31, 1904.
11. Affidavit of def't Fuertes touching jurat to answer, filed Ap'l 5, 1904.
12. Recital of filing of replications to said several answers of April 2, 1904.
13. Minute entry of order overruling pleas, entered Oct. 17, '04.
14. The several answers to the amended bill, filed Nov. 12, 14, and 15, 1904.

15. Recital of filing replications to last answers, March 13, '05.
16. Minute entry of beginning of oral testimony, April 3, 1905.
17. Testimony taken before the Court, together with trans-
1003 lations of the documents offered and admitted during the taking of said testimony, omitting objections to questions and rulings thereon.
18. Order appointing an examiner, dated June 19, 1905.
19. Testimony taken before the Examiner, together with translations of the documents offered and admitted during the taking of said testimony, omitting objections to questions and rulings thereon.
20. Amendments to amended bill to conform to the proofs, filed Nov. 3, 1905.
21. Order allowing said amendments, entered Nov. 8, 1905.
22. Opinion of the court, filed April 21, as of Feb. —, 1906.
23. Findings of fact and conclusions of law, filed April 21, as of Feb. —, 1906.
24. Final decree, entered April 21, as of Feb. —, 1906.
25. Petitions of appeal and supersedeas, dated April 21, 1906.
26. Order allowing appeals and supersedeas, dated April 21, 1906.
27. Supersedeas Bond of Garzot & Fuertes.
28. Motion for fixing Cost Bond on appeal by Burset and other defendants, filed August 2, 1906.
29. Order fixing same, dated August 2, 1906.
30. Copy of this direction and notice attached.
31. The assignment of errors.

Said transcript to be prepared as required by law and the rules of this court and of the Supreme Court of the United States, and to be forwarded to the Clerk of said Court at Washington or or before the 15th day of September, 1906.

(Signed) N. B. K. PETTINGILL,
Of Counsel for Appellants, Garzot & Fuertes.

1004 In the District Court of the United States for Porto Rico.

Filed Aug. 29, 1906.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Motion to Vacate Decree, Etc.

Now come the defendants Victor Burset, Petronila Patricia Rios de Noya and her husband Francisco Noya, by their solicitors Frank Antonsanti and N. B. K. Pettingill, and represent unto the Court that the final decree in said cause in favor of the complainant and against all the defendants herein was given and enrolled at the present term of this court, to wit: On the 21st day of April 1906; that these defendants have entered their appeal from said final decree and the same has been allowed, but has not yet been perfected by the giv-

ing of the bond required by law; and that on the — day of August instant and execution for costs incurred by the complainant in said cause was issued by the Clerk of this Court at the instance of said complainant against all the defendants herein, and the same is now about to be served by the Marshal of this court.

These defendants further represent that, as matter of law, this court was at the time of the commencement of this suit, and has ever since been, without any lawful jurisdiction to hear and determine the same, or to render any judgment or decree therein, because they say that these defendants are in fact, and are alleged by the bill of complaint herein to be, citizens of Porto Rico, and that the complainant, while alleged in the bill of complaint to be a subject of the King of Spain, is in fact and in law a citizen of Porto Rico; that it appears from the sworn testimony of said complainant in this suit that she was born in Porto Rico about the year 1870, that her father died in the year 1875, that she married a Spaniard in the year 1891, and that her said husband died on the 2nd of April in the year 1899 and she still remains his widow; that therefore under the provisions of the Treaty of Paris and the Act of Congress of April 12, 1900, the complainant became at the passage of
1005 said Act and has at all times since remained a citizen of Porto Rico.

These defendants further represent that, in consequence of the facts hereinbefore set forth which appear in the record of this cause, the complainant by the allegation in her said bill of complaint that she was a subject of the King of Spain, committed a legal fraud upon the jurisdiction of this court by such false allegation, whether intentional or otherwise; and that the actual facts touching the citizenship of said complainant should now be looked into and, if the allegations touching the same hereinbefore alleged are found to be true, this court should declare and decree that it was and had been without jurisdiction in this cause from the beginning, that the final decree and all proceedings therein should be wholly set aside and held for naught, and that a decree should be entered herein dismissing complainant's bill of complaint for want of jurisdiction.

Wherefore these defendants move that the execution for costs now in the hands of the Marshal of this court as hereinbefore alleged be suspended until the further order of the court; that the citizenship of the complainant herein be investigated and determined before any further steps are allowed to be taken in the execution of said decree and before the same is allowed to become final and irrevocable by the expiration of the present term of this court; that if the said complainant is found to be in law and in fact a citizen of Porto Rico the final decree in this cause may be vacated, set aside and held for naught and said cause be dismissed from this court for want of jurisdiction of the parties.

And these defendants will ever pray.

(Signed) FRANK ANTONSANTI,
" N. B. K. PETTINGILL,
Solicitors for said Defendants.

1006 *Journal Entry Sept.* 15, 1906.

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The motion to set aside the decree herein is heard and submitted. By stipulation of counsel for the respective parties the defendants Garzot & Fuertes are given until October 12, 1906, to file their record of appeal in the Supreme Court of the United States.

1007 ***Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.***

In the District Court of the United States for Porto Rico, Sitting at San Juan.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Affidavit of Maria Rios Upon Question of Citizenship.

Maria Rios de Rubio, being duly sworn upon her oath says: that she is the complainant in the above-entitled cause; that she was born in the city and Republic of Mexico on the 12th day of December, 1870; that on the 9th day of November 1890, she married Don Ricardo Rubio y Escobar, a native of the City of Cordoba in the Spanish Peninsula.

Affiant states that, her husband the said Don Ricardo Rubio y Escobar at the time of the said marriage was temporarily in Porto Rico, having come here in the service of the King of Spain, and was at the time of the said marriage the chief of Mail and Telegraph of the Peninsula of Spain; that the said Ricardo Rubio y Escobar continued in his position until the war between Spain and the United States and the occupation of Porto Rico by the American troops.

Affiant states that, her father was a subject of the King of Spain and that she, affiant, lived in Spain during the years 1887 and 1888, with the purpose and intention of permanently residing there, but that unavoidable circumstances required her to return to Porto Rico. Affiant says it was her intention always to be and remain subject to the King of Spain and to return to the Peninsula to permanently reside there.

(Signed) MARIA RIOS V. DE RUBIO.

Subscribed and sworn to before me this 10th day of September 1906.

(Signed) JOSÉ G. TORRES,
[SEAL OF NOTARY.] *Notary Public.*

1008 *Declaration of Citizenship.*

(Certified by the Secretary of Porto Rico. Offered by Comp't.)

In Accordance with the Provisions of Section IX of the Treaty of Peace Between the United States and Spain.

The undersigned, born in the Spanish Peninsula and subject to the Kingdom of Spain, residing in the Island of Porto Rico, desiring to preserve his allegiance to the Crown of Spain and in accordance with the provisions of Section 9th, of the Treaty of Peace between the United States and Spain, by this present states:

That his paternal and maternal names are Ricardo Rubio y Escobar, that he is 36 years old, that he was born at Cordoba Province of Cordoba, Spanish Peninsula, that his profession is Property holder; married; that the name of his wife is Maria Rios y Gutman, that he has three living children, whose names, ages, and places of birth are as follows:

Names.	Ages.	Born at.
Zoraida	eight years	Humacao
Maria	seven years	ditto
Ricardo	one year	ditto

That his father's and mother's names are:
Father: Lazaro Rubio.
Mother: Rafaela Escobar.

In testimony whereof, I the said Ricardo Rubio y Escobar, sign this presents at Humacao on the 29th of October 1899.

(Signed) R. RUBIO.
(Signed) JESUS DOMINGUEZ,
Municipal Judge.

Witnesses:
CIPRIANO MANRIQUE.
RAMON REYES, JR.

[SEAL.] (Firmado) ANTONIO AGUILAR,
Clerk Municipal Court.

1009 The People of Porto Rico.

Office of the Secretary.

I, Regis H. Post, Secretary of Porto Rico, do hereby certify that the writing hereto attached is a true and correct copy of Declaration of Nationality of Ricardo Rubio y Escobar, the original being filed and of record in this office.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Porto Rico, at San Juan, this fourteenth day

of September, in the year of our Lord One Thousand nine hundred and six.

(Signed) REGIS H. POST,
[SEAL OF PORTO RICO.] *Secretary of Porto Rico.*

(1 one dollar stamp and 1 fifty cent stamp.)

1010 *Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.*

Don Tomas Rodriguez y Rodriguez, Vice Consul of Spain in this City, acting at the presnt time as Consul in accordance with the law in such cases made and provided,

Certifys: That as it appear from the entries made in the regist-ring book of Humacao, archived in this office and in the registry of personal schedules (Cedulas) of this Consulate, Doña Maria Rios widow of Rubio, has renewed her certificate of citizenship on Sept. 12th, 1900, May 28th, 1901, April 15th, 1902, April 22nd, 1903 and the last time on August 30th, 1905.

And by petition of the person interested I issue this certificate in San Juan, P. R. on this 8th day of September 1906.

(Signed) T. RODRIGUEZ.

[SEAL.]

(*Translation.*)

Puerto Rico.
No. of order 7.
Article of Tariff 60.
Fees $1.93.
Charges .39.
Date 8-9-'06.
Article 71 $1.00.

1011 *Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.*

Don Tomas Rodriguez y Rodriguez, Vice Consul of Spain in this City, acting at the present time as Consul in accordance with the law in such cases made and provided,

Certifys: That according to the data contained in the regist-ring book of Humacao, which is archived in this office, it appears that Don Ricardo Rubio Escobar, who was registered on the 24th of January 1900, did not live the time required in order to renew his certificate of citizenship.

And by petition of his widow Doña Maria Rios, I issue this certificate in San Juan, P. R. on this 8th day of September A. D. 1906.

(Signed) TO RODRIGUEZ.

[SEAL.]

(*Translation.*)

Puerto Rico.
No. of order, 8.
Article of Tariff 60.
Fees $1.39.
Charges, $0.39.
Date 8-9-'06.

1012 *Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.*

Don Tomas Rodriguez y Rodriguez Vice Consul of Spain in this City, acting at present as Consul in accordance with the laws for such cases made and provided,

Certifys: That on the first folio and under the numbers twenty seven and twenty-eight respectively, of the Registry of Spaniards, kept at the city of Humacao, there appears registered Don Ricardo Rubio Escobar, of Cardoba, Spain, and Doña Maria Rios de Rubio, of Mexico, which inscriptions were made on the twenty-fourth day of Jan. nineteen hundred.

And by petition of Doña Maria Rios widow of Rubio, I issue this certificate in San Juan, Porto Rico, on this 8th day of September One thousand nine hundred and six.

(Signed) T. RODRIGUEZ.

[SEAL.]

(Stamp.)
No. of order—6.
Art. of Tariff 60.
Fees $1.93.
Charges $0.39.
Date 8–9–906.

1013 In the District Court of the United States for Porto Rico.

Filed Sept. 24, 1906.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The decree in this case was entered at the present term of this court by a former Judge on April 21, 1906. Thereafter, certain of the defendants, to wit, Garzot and Fuertes, perfected an appeal to the Supreme Court of the United States and filed a supersedeas bond in the premises.

But Victor Burset, Petronila Patricia Rios de Noya and her husband Francisco Noya and Santiago Palmer had not perfected their

appeal, although the same was granted. And on August 26, 1906, came into court and represented by a motion that, an execution for costs had issued against all the defendants in the premises, and requested that the granting of said appeal be set aside and that the motion for costs be recalled, and that the decree be entirely set aside, certainly as to these who have not perfected their appeal, for the reason that, as matter of law, this court was at the time of the commencement of the suit, and ever since has been, without any jurisdiction to try or hear the same or render any judgment or decree therein. The reason for the motion is that the defendants are in fact, and are alleged in the bill to be citizens of Porto Rico, and that the complainant Maria Riós de Rubio, although she alleged in her bill that she was a subject of the King of Spain, was, and is in fact and in law a citizen of Porto Rico, and that therefore, all the parties being citizens of Porto Rico, this court as matter of law, under its ruling in a recent case, was without jurisdiction to entertain the cause at all; and that such a question in a court of the United States can be raised at any time before the court loses control of the record in the case.

1014 On the question as to whether or not this court at the same term still has control of the cause before the appeal, though granted, is perfected by the filing of a bond for costs, the Court has no doubt whatsoever, under the authority of 101 U. S. 745, and other authorities cited, and therefore decides and holds that it still has control of the cause.

Although the complainant alleges in her bill of complaint that she was a subject of the King of Spain, it appeared from the testimony as taken by the master, whether the same was inadvertent or otherwise, that she was born in Porto Rico about the year 1870, that her father died in the year 1875, that she married in 1891, and that her husband died on the second of April, 1899, and that she still remains his widow.

Counsel for complainant came in and made a showing against this and claimed that it was a mistake, and, in proof of this contrary, introduced first the affidavit of the complainant herself, showing that she was born of Spanish parents in the city of Mexico in the republic of Mexico on the 12th day of December, 1870; and that on the ninth day of November, 1890, she married Don Ricardo Rubio y Escobar, a native of the city of Cordova in the Spanish peninsula, and that she lived in Spain during the years 1887 and 1888 with the purpose and intention of permanently residing there, but that unavoidable circumstances required her to return to Porto Rico; further that it was, and always has been her intention to remain a subject of the King of Spain and to return there. The affidavit will be set out in the record.

There is also filed a certificate from the present Secretary of Porto Rico, showing that under the provisions of section 9 of the Treaty of Peace between the United States and Spain, her husband Ricardo Rios y Escobar, on the 29th day of October, 1899, signed a

1015 certificate for himself to preserve his Spanish allegiance under the treaty, before Antonio Aguilar, clerk of the mu-

nicipal court (which has been held to be *pro tanto* a court of record) at Humacao, in Porto Rico, and that in that he also gave the name of complainant and her children. It also will be found in the record.

There was also filed a certificate from T. Rodriguez, Vice-counsel of Spain at San Juan, that according to the data contained in the registry books at Humacao, which is archived in this office, it appears that Don Ricardo Rios y Escobar, who was registered on the 24th day of January, 1900, did not live the time required in order to renew his certificate of citizenship.

There was also introduced in evidence a certificate of the same Mr. Rodriguez, Vice-Consul as aforesaid, that on the first folio and under Nos. 27 and 28 respectively of the registry of Spaniards kept at the city of Humacao, there appears registered Don Ricardo Rubio y Escobar of Cordova, Spain, and Doña Maria Rios de Rubio of Mexico, which inscriptions were made on the 24th day of January, 1900.

And still another certificate from the same official, which certifies that in the same registry of personal schedules of his custody, Doña Maria Rios, widow of Rubio, has renewed her certificate of citizenship (to Spain) on September 12, 1900; May 28, 1901; April 15, 1902; April 22, 1903; and the last time on August 13, 1905.

It is manifest that this woman, the complainant, was in legal contemplation, "a native of the peninsula," within the meaning of Art. 9 of the Treaty of Paris, at the time of the ratification thereof. She was born in Mexico of Spanish parents, but whether they were there temporarily or permanently does not appear. However, she married a Spaniard, Mr. Rubio y Escobar, and her own parents had taken her to Spain while she was yet a child. Her husband did everything he could to preserve, not only his Spanish citi-
1016 zenship, but hers as well, and it certainly is within the meaning of the Treaty that, when a man being in the language of Art. 9 a Spanish subject, native of the peninsula, preserved his Spanish citizenship under that Article, carried with him the citizenship of his wife whether or not he mentioned her in his declaration. And the woman herself, it appears, ratified and kept up this declaration of Spanish citizenship year after year, as above set out. It would be unreasonable to hold that the Treaty did not intend that the wife and children of a Spaniard would follow his citizenship under that article. The authorities of the Military Government in Porto Rico understood that article of the Treaty in this light, as is made plainly manifest by G. O. 132 issued on August 31, 1899, by Brigadier General Davis. Because it requires the husband making such declaration to set out the name and surname of his wife, and provides that unmarried women, natives of the peninsula, can make a declaration the same as men. If there is any question as to whether or not the court in question was a court of record within the meaning of this article, we refer again to G. O. 132, which specifies that very court as the one before which this declaration is to be made. This Court has, at this same term, after careful consideration, held that the municipal courts of Porto Rico were *pro tanto,* their jurisdiction being

$400 and having a clerk and a seal, courts of record. But in this view we call attention to the Spanish text of Art. 9 of the Treaty of Paris, which provides that this declaration is to be made before, "una oficina de registro," meaning registry office. So that for Spaniards at least, as the Spanish text of the Treaty is just as official as the English text, any registry office would properly be held to be sufficient by this court. The fact is that practically all the declarations made under that article of the Treaty by Spaniards to preserve their Spanish allegiance were made before these municipal courts, and are now on file with the proper custodian. Par.
1017 4 of the said G. O. 132 was modified by G. O. 164 of October 18, 1899, and authorized guardians to make declarations for their wards, and principals and masters with respect to their employees or dependents who are under age, etc. The woman was not a born Porto Rican at the date of the Treaty. She was a Spaniard, married to a Spaniard, although she was born in Mexico. We do not think that her case comes within the rule in Shanks *v.* Dupont, 3 Peters, 242, but that under the intent and meaning of Art. 9 of the Treaty and her own acts and intentions, she was at the time of the filing of the bill here, and still is a Spaniard, and therefore, because of the adverse citizenship of the parties, this court had jurisdiction and the decree should stand, and it is so ordered, and the matter of the appeal will be considered as restored to the condition it was in before the filing of the motion considered herein.

As to the motion herein to quash the execution for costs, it is granted and the same will be stayed until the determination of the cause in the Supreme Court of the United States. The Court can find but little authority as to this proposition and practically none has been pointed out to it by counsel.

The present incumbent of this bench has noticed some instances where costs and damages thus required to be paid in this island, have been lost to the party who finally recovered judgment in the Supreme Court of the United States, and, as part of the defendants have *have* a supersedeas bond, and it is claimed that the complainant is impecunious and could not respond in case of a reversal of the cause, even for the costs, the Court will not take any risk on it, and therefore an order will be entered staying the execution for costs for the time, as stated.

(Signed) B. S. RODEY, *Judge.*

1018 *Journal Entry* (*Sept.* 24, 1906).

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The Court files an opinion herein, and in accordance therewith overrules the motion of certain defendants to open up the decree, to which said defendants except. The motion to stay the execution for costs is sustained.

1019 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Assignment of Errors.

Now come Victor Burset, Petronila Patricia Rios de Noya, Francisco Noya and Santiago Palmer 4 of the defendants and appellants in the above entitled cause, and assign the following as the errors committed by the court aforesaid in the course of the proceedings in said cause in said court:

I. The court erred in overruling the demurrers of these defendants filed to the original bill of complaint on August 3rd, 1903.

II. The court erred in making the order herein dated October 9, 1903, overruling all demurrers and allowing said original bill to be amended.

III. The court erred in allowing, by its order dated March 8, 1904, the filing of the amendment to the bill of complaint tendered after the filing of defendants' pleas.

IV. The court erred in overruling the pleas of these defendants by its order of October 7, 1904.

V. The court erred in compelling the defendants to elect whether they would avail themselves of the services of one Rafael Lopez Landron, an attorney of the court, in his professional capa-
1020 city as a lawyer, or as a witness in their behalf; and, after defendants had elected, under such compulsion, to use said Landron as a witness, in excluding him from the court room where the testimony was being taken, thereby depriving these defendants of one of their chosen counsel.

VI. The court erred in refusing to grant defendants' motion for a decree dismissing the bill at the conclusion of complainant's testimony as a witness in her own behalf.

VII. The court erred in overruling defendants' motion to be allowed to controvert the evidence on behalf of complainant on the issue of fraud and to have that issue determined before hearing evidence upon the case at large.

VIII. The court erred in overruling defendants' objection to the admission in evidence of the receipts for rent given by Manuela Gutman to the complainant for a certain plantation called "San José de las Mulas."

IX. The court erred in overruling defendants' objection to the admission in evidence of a certain document of pledge, marked "Exhibit J" by the Master.

X. The court erred in overruling the objection of defendants to the question "From your best judgment what was the value of those lands per acre in 1902?" asked of complainant's witness Strayer.

XI. The court erred in overruling defendants' motion, made at the conclusion of all testimony on behalf of complainant, to dismiss her said bill.

XII. The court erred in sustaining objections of complainant to the question "What was the reason that the agreement signed the night of the 16th of January was drawn in the shape of a
1021 private agreement and not at that time of a public document?" asked of defendants' witness Cuadra.

XIII. The court erred in sustaining the objection of complainant to the admission in evidence of the document offered by the defendant and marked "Exhibit 7 for Defendants."

XIV. The court erred in sustaining the objection of complainant to the admission in evidence of the document offered by the defendant and marked "Exhibit 8 for Defendants."

XV. The court erred in sustaining the objection of complainant to the admission in evidence of the Notarial draft of the private agreement, drawn by Notary Aldrey, marked "Exhibit 16 for Defendants."

XVI. The court erred in overruling the objections of defendants to the admission in evidence of the document marked "Exhibit Q for Complainant."

XVII. The court erred in overruling the objections of defendants to the leading questions asked by complainant of her witness which appear on page 237 of the record of Magee, Special Master.

XVIII. The court erred in overruling objections of defendants to questions asked of complainant as a witness in her own behalf as to how she acquired title to the tract of land known as "Braziles," which appear on pages 242 and 243 of the Report of Magee, Special Master.

XIX. The court erred in overruling the objections of defendants to the admission in evidence of the alleged copy of the Entry
1022 in Book 11 of Day Book, Folio 124, of the Registry of Property of Humacao, which is marked "Exhibit U for Complainant."

XX. The court erred in overruling motion of defendants to strike out that portion of the testimony of Vias Ochoteca, a witness for complainant, which referred to a conversation with Francisco Porrata, a witness for defendants, which appears on page 292 of the Report of Magee, Special Master.

XXI. The court erred in overruling the objections of defendants to the admission in evidence of a part of the record of the testamentary proceedings over the estate of José María Rios y Berrios, marked "Exhibit X for Complainant."

XXII. The court erred in allowing complainant, over the objection of defendants, to file the amendments to her bill of complainant, tendered in her behalf after the conclusion of the evidence for the purpose of making the same conform to the proofs.

XXIII. The court erred in finding as a fact from the evidence that all the properties described in the finding of fact numbered 3 were inherited by said José María Rios y Berrios from his father and mother.

XXIV. The court erred in finding as a fact from the evidence, as stated in its 4th finding, that Manuela Gutman had made no partition of the inheritance of her children prior to her death.

XXV. The court erred in finding as a fact from the evidence, as stated in its 7th finding, that complainant had never transferred or relinquished her title or interest in any of the property left by her father.

1023 XXVI. The court erred in finding as a fact, as further stated in its 7th finding, that the whole share of José María Rios 2nd was "bienes reservables," without finding that the same was subject to the claim of his mother Manuela Gutman for her portion of the "gananciales" and for services during the many years of her administration of the estate.

XXVII. The court erred in finding as a fact, as stated in its 8th finding, that at the death of José María Rios 1st there was no community property in which his widow had an interest.

XVIII. The court erred in finding as a fact that the interest of Manuela Gutman in the estate of her deceased husband, José María Rios 1st, was 8000 pesos and no more, and that during her administration she applied to her own use a sum greater than the amount of such interest.

XXIX. The court erred in finding as a fact, as stated in its 8th finding, that Manuela Gutman applied to her own use all the proceeds and profits of the entire estate of José María Rios 1st.

XXX. The court erred in finding as a fact, as stated in its 9th finding, that the private agreement of January 16th, 1901, was collusively drawn and the signature of complainant obtained thereto by misrepresentation and deception, and that there was no consideration for the same.

XXXI. The court erred in finding as a fact that complainant promptly repudiated said private agreement after discovering within a day or two the misrepresentation and deception practiced upon her.

1024 XXXII. The court erred in finding as a fact, as stated in its 9th finding, that complainant within two or three days after the execution of said private agreement notified her lawyer, Cuadra, that she had been deceived and repudiated the agreement.

XXXIII. The court erred in finding as a fact, as stated in its 11th finding, that attorneys Landron and Cuadra conspired to defraud complainant of her interest in her father's estate by the institution of the dominion proceedings.

XXXIV. The court erred in finding as a fact, as stated in its 12th finding, that the declaration of dominion was collusively obtained.

XXXV. The court erred in finding as a fact, as stated in its said 12th finding, that said proceedings for the declaration of a dominion title were carried on and concluded as *ex parte* proceedings.

XXXVI. The court erred in finding as a matter of law that the property described in the complainant's bill descended to the children of José María Rios without subjecting the same to the rights of the widow in the ganancial property.

XXXVII. The court erred in finding as a matter of law that said properties did not enter into or form a part of the conjugal society, and that said Manuela Gutman had no claim against said property upon the bases set up in the answer of the defendants.

XXXVIII. The court erred in finding as a matter of law that the alleged deception and misrepresentation practiced upon complainant were material and relevant to the determination of her rights.

XXXIX. The court erred in finding as a matter of law that the complainant could not devest her rights by a private agreement such as that admitted in evidence.

1025 XL. The court erred in finding as a matter of law that the District Court of Humacao was without jurisdiction to devest the complainant of her interest in the properties described in the bill, hence said declaration of dominion was null and void.

XLI. The court erred in finding as a matter of law that the Supreme Court did not pass upon the merits of complainant's appeal in said dominion proceedings, but dismissed the same for improper procedure in taking the appeal.

XLII. The court erred in finding as a matter of law that the complainant was at the date of said findings entitled to a one-half interest in the properties described in her bill.

XLIII. The court erred in finding as a matter of law that the inscriptions and conveyances specified in said findings were null and void.

XLIV. The court erred in entering a final decree herein in favor of the complainant and against these defendants, instead of entering a final decree dismissing complainant's said bill.

XLV. The court erred in denying the motion of these defendants to vacate and set aside its final decree, made on the ground of lack of jurisdiction by reason of the citizenship of the parties.

Wherefore, these defendants pray the honorable Supreme Court of the United States to examine and correct the errors assigned and for the reversal of the said decrees and orders of said District Court of the United States for Porto Rico, entered in the above entitled cause, and for the proper direction to said court to enter a

1026 decree dismissing complainant's bill of complaint.

And as in duty bound, they will ever pray.

VICTOR BURSET,
PETRONILA PATRICIA RIOS DE NOYA,
FRANCISCO NOYA, AND
SANTIAGO PALMER,
By N. B. K. PETTINGILL,
Their Solicitor and Counsel.

1027 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Praecipe for Transcript.

To the Clerk of said Court:

You will please prepare a transcript of record in this cause on behalf of the defendants Victor Burset, Petronila Patricia Rios de Noya, Francisco Noya and Santiago Palmer, to be filed in the office of the Clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said Court, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

The same record as forwarded in the appeal case of the defendants Juan R. Garzot and Faustino R. Fuertes.

The motion made by these defendants to vacate the decree of the Court, and the order denying the same.

The appeal bond of these defendants.

The assignment of errors of these defendants.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the said United States Supreme Court and to be on file at the office of the Clerk of said Supreme Court at Washington before —— —, 1906.

N. B. K. PETTINGILL,
Solicitor for Victor Buset, Petronila Patricia Rios de Noya, Francisco Noya and Santiago Palmer, Appellants.

1028 *Cost Bond.*

(Filed Sept. 24, 1906.)

Know all men by these presents, that we, Victor Burset, Petronila Rios de Noya, and Francisco Noya, as principals and Clementina Lugo Vda. de Gonzalez and Rafael Rexach, as sureties, are held and firmly bound unto Maria Rios de Rubio in the full and just sum of Five Hundred Dollars, to be paid to said Maria Rios de Rubio, her executors, administrators or assigns, for the payment whereof well and truly to be made, we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of August, 1906.

Whereas lately at a session of the United States District Court for Porto Rico, in a suit pending in that court between the said Maria Rios de Rubio as complainant and the said Victor Burset, Petronila Rios de Noya and Francisco Noya and Santiago R. Palmer and Juan R. Garzot and Faustino R. Fuertes, as co-partners under the

firm name of Garzot & Fuertes as defendants, a decree was rendered against all the said defendants; and the said defendants having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to said Maria Rios de Rubio is about to be issued, citing and admonishing her to be and appear before said Supreme Court at Washington;

Now the condition of the above obligation is such that if the said Victor Burset, Petronila Rios de Noya and Francisco Noya shall prosecute their said appeal to effect and shall answer for and pay all costs which may be awarded against them, if they fail to make their plea good, then the above obligation is to be void, else to remain in full force and virtue.

(Signed) VICTOR BURSET. [L. S.]
" PETRONILA R. DE NOYA. [L. S.]
" FRANCS. NOYA. [L. S.]
" CLEMENTINA LUGO VDA. GONZALEZ. [L. S.]
" RAFAEL REXACH. [L. S.]

1029 UNITED STATES OF AMERICA,
District of Porto Rico:

Clementina Lugo Vda. Gonzalez and Rafael Rexach, being duly sworn say, each for himself, that he is worth in visible property within the Island of Porto Rico subject to levy under execution more than the sum of Five Hundred Dollars, over and above all debts, legal set-offs, and other liabilities.

(Signed) CLEMENTINA LUGO VDA. GONZALEZ.
" RAFAEL REXACH.

Sworn to and subscribed before me, the undersigned authority, this 26 day of August, 1906.

(Signed) F. DE LA TORRE,
[SEAL OF NOTARY.] *Notary Public.*

Approved this Sept. 24th, 1906.
(Signed) B. S. RODEY, *Judge.*

1030 In the District Court of the United States for Porto Rico.

No. 196. Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

I, H. H. Scoville, Clerk of the District Court of the United States for Porto Rico, do hereby certify that the foregoing one thousand and twenty nine pages (1029) numbered from 1 to 1029, inclusive,

are and constitute a true and correct copy of the record and proceedings in the above and therein entitled cause, called for by the praecipes of the parties therein set out for the purposes of this appeal, as the same remain of record and on file in the office of the Clerk of this Court.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court at San Juan, Porto Rico, this second day of October, 1906.

H. H. SCOVILLE,
Clerk of the District Court of the United States for Porto Rico.

[Seal United States District Court for the District of Porto Rico.]

Endorsed on cover: File No. 20,435. Porto Rico, D. C. U. S. Term No. 141. Juan R. Garzot and Faustino R. Fuertes, co-partners under the firm-name of Garzot & Fuertes, appellants, *vs.* Maria Rios de Rubio. File No. 20,436. Term No. 142. Victor Burset, Petronila Rios de Noya and her husband, Francisco Noya, appellants, *vs.* Maria Rios de Rubio. Filed October 24th, 1906. File Nos. 20,435 and 20,436.

15. Recital of filing replications to last answers, March 13, '05.
16. Minute entry of beginning of oral testimony, April 3, 1905.
17. Testimony taken before the Court, together with trans-
1003 lations of the documents offered and admitted during the taking of said testimony, omitting objections to questions and rulings thereon.
18. Order appointing an examiner, dated June 19, 1905.
19. Testimony taken before the Examiner, together with translations of the documents offered and admitted during the taking of said testimony, omitting objections to questions and rulings thereon.
20. Amendments to amended bill to conform to the proofs, filed Nov. 3, 1905.
21. Order allowing said amendments, entered Nov. 8, 1905.
22. Opinion of the court, filed April 21, as of Feb. —, 1906.
23. Findings of fact and conclusions of law, filed April 21, as of Feb. —, 1906.
24. Final decree, entered April 21, as of Feb. —, 1906.
25. Petitions of appeal and supersedeas, dated April 21, 1906.
26. Order allowing appeals and supersedeas, dated April 21, 1906.
27. Supersedeas Bond of Garzot & Fuertes.
28. Motion for fixing Cost Bond on appeal by Burset and other defendants, filed August 2, 1906.
29. Order fixing same, dated August 2, 1906.
30. Copy of this direction and notice attached.
31. The assignment of errors.

Said transcript to be prepared as required by law and the rules of this court and of the Supreme Court of the United States, and to be forwarded to the Clerk of said Court at Washington or or before the 15th day of September, 1906.

(Signed) N. B. K. PETTINGILL,
Of Counsel for Appellants, Garzot & Fuertes.

1004 In the District Court of the United States for Porto Rico.

Filed Aug. 29, 1906.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Motion to Vacate Decree, Etc.

Now come the defendants Victor Burset, Petronila Patricia Rios de Noya and her husband Francisco Noya, by their solicitors Frank Antonsanti and N. B. K. Pettingill, and represent unto the Court that the final decree in said cause in favor of the complainant and against all the defendants herein was given and enrolled at the present term of this court, to wit: On the 21st day of April 1906; that these defendants have entered their appeal from said final decree and the same has been allowed, but has not yet been perfected by the giv-

ing of the bond required by law; and that on the — day of August instant and execution for costs incurred by the complainant in said cause was issued by the Clerk of this Court at the instance of said complainant against all the defendants herein, and the same is now about to be served by the Marshal of this court.

These defendants further represent that, as matter of law, this court was at the time of the commencement of this suit, and has ever since been, without any lawful jurisdiction to hear and determine the same, or to render any judgment or decree therein, because they say that these defendants are in fact, and are alleged by the bill of complaint herein to be, citizens of Porto Rico, and that the complainant, while alleged in the bill of complaint to be a subject of the King of Spain, is in fact and in law a citizen of Porto Rico; that it appears from the sworn testimony of said complainant in this suit that she was born in Porto Rico about the year 1870, that her father died in the year 1875, that she married a Spaniard in the year 1891, and that her said husband died on the 2nd of April in the year 1899 and she still remains his widow; that therefore under the provisions of the Treaty of Paris and the Act of Congress of April 12, 1900, the complainant became at the passage of
1005 said Act and has at all times since remained a citizen of Porto Rico.

These defendants further represent that, in consequence of the facts hereinbefore set forth which appear in the record of this cause, the complainant by the allegation in her said bill of complaint that she was a subject of the King of Spain, committed a legal fraud upon the jurisdiction of this court by such false allegation, whether intentional or otherwise; and that the actual facts touching the citizenship of said complainant should now be looked into and, if the allegations touching the same hereinbefore alleged are found to be true, this court should declare and decree that it was and had been without jurisdiction in this cause from the beginning, that the final decree and all proceedings therein should be wholly set aside and held for naught, and that a decree should be entered herein dismissing complainant's bill of complaint for want of jurisdiction.

Wherefore these defendants move that the execution for costs now in the hands of the Marshal of this court as hereinbefore alleged be suspended until the further order of the court: that the citizenship of the complainant herein be investigated and determined before any further steps are allowed to be taken in the execution of said decree and before the same is allowed to become final and irrevocable by the expiration of the present term of this court; that if the said complainant is found to be in law and in fact a citizen of Porto Rico the final decree in this cause may be vacated, set aside and held for naught and said cause be dismissed from this court for want of jurisdiction of the parties.

And these defendants will ever pray.

(Signed) FRANK ANTONSANTI,
" N. B. K. PETTINGILL,
Solicitors for said Defendants.

1006 *Journal Entry Sept.* 15, 1906.

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The motion to set aside the decree herein is heard and submitted. By stipulation of counsel for the respective parties the defendants Garzot & Fuertes are given until October 12, 1906, to file their record of appeal in the Supreme Court of the United States.

1007 ***Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.***

In the District Court of the United States for Porto Rico, Sitting at San Juan.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Affidavit of Maria Rios Upon Question of Citizenship.

Maria Rios de Rubio, being duly sworn upon her oath says: that she is the complainant in the above-entitled cause; that she was born in the city and Republic of Mexico on the 12th day of December, 1870; that on the 9th day of November 1890, she married Don Ricardo Rubio y Escobar, a native of the City of Cordoba in the Spanish Peninsula.

Affiant states that, her husband the said Don Ricardo Rubio y Escobar at the time of the said marriage was temporarily in Porto Rico, having come here in the service of the King of Spain, and was at the time of the said marriage the chief of Mail and Telegraph of the Peninsula of Spain; that the said Ricardo Rubio y Escobar continued in his position until the war between Spain and the United States and the occupation of Porto Rico by the American troops.

Affiant states that, her father was a subject of the King of Spain and that she, affiant, lived in Spain during the years 1887 and 1888, with the purpose and intention of permanently residing there, but that unavoidable circumstances required her to return to Porto Rico. Affiant says it was her intention always to be and remain subject to the King of Spain and to return to the Peninsula to permanently reside there.

(Signed) MARIA RIOS V. DE RUBIO.

Subscribed and sworn to before me this 10th day of September 1906.

(Signed) JOSÉ G. TORRES,
Notary Public.
[SEAL OF NOTARY.]

1008 *Declaration of Citizenship.*

(Certified by the Secretary of Porto Rico. Offered by Comp't.)

In Accordance with the Provisions of Section IX of the Treaty of Peace Between the United States and Spain.

The undersigned, born in the Spanish Peninsula and subject to the Kingdom of Spain, residing in the Island of Porto Rico, desiring to preserve his allegiance to the Crown of Spain and in accordance with the provisions of Section 9th, of the Treaty of Peace between the United States and Spain, by this present states:

That his paternal and maternal names are Ricardo Rubio y Escobar, that he is 36 years old, that he was born at Cordoba Province of Cordoba, Spanish Peninsula, that his profession is Property holder; married; that the name of his wife is Maria Rios y Gutman, that he has three living children, whose names, ages, and places of birth are as follows:

Names.	Ages.	Born at.
Zoraida	eight years	Humacao
Maria	seven years	ditto
Ricardo	one year	ditto

That his father's and mother's names are:
Father: Lazaro Rubio.
Mother: Rafaela Escobar.

In testimony whereof, I the said Ricardo Rubio y Escobar, sign this presents at Humacao on the 29th of October 1899.

(Signed) R. RUBIO.
(Signed) JESUS DOMINGUEZ,
Municipal Judge.

Witnesses:
CIPRIANO MANRIQUE.
RAMON REYES, JR.

[SEAL.] (Firmado) ANTONIO AGUILAR
Clerk Municipal Court.

1009 The People of Porto Rico.

Office of the Secretary.

I, Regis H. Post, Secretary of Porto Rico, do hereby certify that the writing hereto attached is a true and correct copy of Declaration of Nationality of Ricardo Rubio y Escobar, the original being filed and of record in this office.

In witness whereof, I have hereunto set my hand and caused to be affixed the Great Seal of Porto Rico, at San Juan, this fourteenth day

of September, in the year of our Lord One Thousand nine hundred and six.

(Signed) REGIS H. POST,
[SEAL OF PORTO RICO.] *Secretary of Porto Rico.*

(1 one dollar stamp and 1 fifty cent stamp.)

1010 *Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.*

Don Tomas Rodriguez y Rodriguez, Vice Consul of Spain in this City, acting at the presnt time as Consul in accordance with the law in such cases made and provided,

Certif*ys*: That as it appear from the entries made in the regist-ring book of Humacao, archived in this office and in the registry of personal schedules (Cedulas) of this Consulate, Doña Maria Rios widow of Rubio, has renewed her certificate of citizenship on Sept. 12th, 1900, May 28th, 1901, April 15th, 1902, April 22nd, 1903 and the last time on August 30th, 1905.

And by petition of the person interested I issue this certificate in San Juan, P. R. on this 8th day of September 1906.

(Signed) T. RODRIGUEZ.

[SEAL.]

(*Translation.*)

Puerto Rico.
No. of order 7.
Article of Tariff 60.
Fees $1.93.
Charges .39.
Date 8-9-'06.
Article 71 $1.00.

1011 *Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.*

Don Tomas Rodriguez y Rodriguez, Vice Consul of Spain in this City, acting at the present time as Consul in accordance with the law in such cases made and provided,

Certif*ys*: That according to the data contained in the regist-ring book of Humacao, which is archived in this office, it appears that Don Ricardo Rubio Escobar, who was registered on the 24th of January 1900, did not live the time required in order to renew his certificate of citizenship.

And by petition of his widow Doña Maria Rios, I issue this certificate in San Juan, P. R. on this 8th day of September A. D. 1906.

(Signed) TO RODRIGUEZ.

[SEAL.]

(*Translation.*)

Puerto Rico.
No. of order, 8.
Article of Tariff 60.
Fees $1.39.
Charges, $0.39.
Date 8-9-'06.

1012 *Exhibit Offered by Complainant in Opposition to Motion to Open up Decree.*

Don Tomas Rodriguez y Rodriguez Vice Consul of Spain in this City, acting at present as Consul in accordance with the laws for such cases made and provided,

Certifys: That on the first folio and under the numbers twenty seven and twenty-eight respectively, of the Registry of Spaniards, kept at the city of Humacao, there appears registered Don Ricardo Rubio Escobar, of Cardoba, Spain, and Doña Maria Rios de Rubio, of Mexico, which inscriptions were made on the twenty-fourth day of Jan. nineteen hundred.

And by petition of Doña Maria Rios widow of Rubio, I issue this certificate in San Juan, Porto Rico, on this 8th day of September One thousand nine hundred and six.

(Signed) T. RODRIGUEZ.

[SEAL.]

(Stamp.)
No. of order—6.
Art. of Tariff 60.
Fees $1.93.
Charges $0.39.
Date 8–9–906.

1013 In the District Court of the United States for Porto Rico.

Filed Sept. 24, 1906.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The decree in this case was entered at the present term of this court by a former Judge on April 21, 1906. Thereafter, certain of the defendants, to wit, Garzot and Fuertes, perfected an appeal to the Supreme Court of the United States and filed a supersedeas bond in the premises.

But Victor Burset, Petronila Patricia Rios de Noya and her husband Francisco Noya and Santiago Palmer had not perfected their

appeal, although the same was granted. And on August 26, 1906, came into court and represented by a motion that an execution for costs had issued against all the defendants in the premises, and requested that the granting of said appeal be set aside and that the motion for costs be recalled, and that the decree be entirely set aside, certainly as to these who have not perfected their appeal, for the reason that, as matter of law, this court was at the time of the commencement of the suit, and ever since has been, without any jurisdiction to try or hear the same or render any judgment or decree therein. The reason for the motion is that the defendants are in fact, and are alleged in the bill to be citizens of Porto Rico, and that the complainant Maria Rios de Rubio, although she alleged in her bill that she was a subject of the King of Spain, was, and is in fact and in law a citizen of Porto Rico, and that therefore, all the parties being citizens of Porto Rico, this court as matter of law, under its ruling in a recent case, was without jurisdiction to entertain the cause at all; and that such a question in a court of the United States can be raised at any time before the court loses control of the record in the case.

1014 On the question as to whether or not this court at the same term still has control of the cause before the appeal, though granted, is perfected by the filing of a bond for costs, the Court has no doubt whatsoever, under the authority of 101 U. S. 745, and other authorities cited, and therefore decides and holds that it still has control of the cause.

Although the complainant alleges in her bill of complaint that she was a subject of the King of Spain, it appeared from the testimony as taken by the master, whether the same was inadvertent or otherwise, that she was born in Porto Rico about the year 1870, that her father died in the year 1875, that she married in 1891, and that her husband died on the second of April, 1899, and that she still remains his widow.

Counsel for complainant came in and made a showing against this and claimed that it was a mistake, and, in proof of this contrary, introduced first the affidavit of the complainant herself, showing that she was born of Spanish parents in the city of Mexico in the republic of Mexico on the 12th day of December, 1870; and that on the ninth day of November, 1890, she married Don Ricardo Rubio y Escobar, a native of the city of Cordova in the Spanish peninsula, and that she lived in Spain during the years 1887 and 1888 with the purpose and intention of permanently residing there, but that unavoidable circumstances required her to return to Porto Rico; further that it was, and always has been her intention to remain a subject of the King of Spain and to return there. The affidavit will be set out in the record.

There is also filed a certificate from the present Secretary of Porto Rico, showing that under the provisions of section 9 of the Treaty of Peace between the United States and Spain, her husband Ricardo Rios y Escobar, on the 29th day of October, 1899, signed a

1015 certificate for himself to preserve his Spanish allegiance under the treaty, before Antonio Aguilar, clerk of the mu-

nicipal court (which has been held to be *pro tanto* a court of record) at Humacao, in Porto Rico, and that in that he also gave the name of complainant and her children. It also will be found in the record.

There was also filed a certificate from T. Rodriguez, Vice-counsel of Spain at San Juan, that according to the data contained in the registry books at Humacao, which is archived in this office, it appears that Don Ricardo Rios y Escobar, who was registered on the 24th day of January, 1900, did not live the time required in order to renew his certificate of citizenship.

There was also introduced in evidence a certificate of the same Mr. Rodriguez, Vice-Consul as aforesaid, that on the first folio and under Nos. 27 and 28 respectively of the registry of Spaniards kept at the city of Humacao, there appears registered Don Ricardo Rubio y Escobar of Cordova, Spain, and Doña Maria Rios de Rubio of Mexico, which inscriptions were made on the 24th day of January, 1900.

And still another certificate from the same official, which certifies that in the same registry of personal schedules of his custody, Doña Maria Rios, widow of Rubio, has renewed her certificate of citizenship (to Spain) on September 12, 1900; May 28, 1901; April 15, 1902; April 22, 1903; and the last time on August 13, 1905.

It is manifest that this woman, the complainant, was in legal contemplation, "a native of the peninsula," within the meaning of Art. 9 of the Treaty of Paris, at the time of the ratification thereof. She was born in Mexico of Spanish parents, but whether they were there temporarily or permanently does not appear. However, she married a Spaniard, Mr. Rubio y Escobar, and her own parents had taken her to Spain while she was yet a child. Her husband did everything he could to preserve, not only his Spanish citi-
1016 zenship, but hers as well, and it certainly is within the meaning of the Treaty that, when a man being in the language of Art. 9 a Spanish subject, native of the peninsula, preserved his Spanish citizenship under that Article, carried with him the citizenship of his wife whether or not he mentioned her in his declaration. And the woman herself, it appears, ratified and kept up this declaration of Spanish citizenship year after year, as above set out. It would be unreasonable to hold that the Treaty did not intend that the wife and children of a Spaniard would follow his citizenship under that article. The authorities of the Military Government in Porto Rico understood that article of the Treaty in this light, as is made plainly manifest by G. O. 132 issued on August 31, 1899, by Brigadier General Davis. Because it requires the husband making such declaration to set out the name and surname of his wife, and provides that unmarried women, natives of the peninsula, can make a declaration the same as men. If there is any question as to whether or not the court in question was a court of record within the meaning of this article, we refer again to G. O. 132, which specifies that very court as the one before which this declaration is to be made. This Court has, at this same term, after careful consideration, held that the municipal courts of Porto Rico were *pro tanto*, their jurisdiction being

$400 and having a clerk and a seal, courts of record. But in this view we call attention to the Spanish text of Art. 9 of the Treaty of Paris, which provides that this declaration is to be made before, "una oficina de registro," meaning registry office. So that for Spaniards at least, as the Spanish text of the Treaty is just as official as the English text, any registry office would properly be held to be sufficient by this court. The fact is that practically all the declarations made under that article of the Treaty by Spaniards to preserve their Spanish allegiance were made before these municipal courts, and are now on file with the proper custodian. Par.
1017 4 of the said G. O. 132 was modified by G. O. 164 of October 18, 1899, and authorized guardians to make declarations for their wards, and principals and masters with respect to their employees or dependents who are under age, etc. The woman was not a born Porto Rican at the date of the Treaty. She was a Spaniard, married to a Spaniard, although she was born in Mexico. We do not think that her case comes within the rule in Shanks *v.* Dupont, 3 Peters, 242, but that under the intent and meaning of Art. 9 of the Treaty and her own acts and intentions, she was at the time of the filing of the bill here, and still is a Spaniard, and therefore, because of the adverse citizenship of the parties, this court had jurisdiction and the decree should stand, and it is so ordered, and the matter of the appeal will be considered as restored to the condition it was in before the filing of the motion considered herein.

As to the motion herein to quash the execution for costs, it is granted and the same will be stayed until the determination of the cause in the Supreme Court of the United States. The Court can find but little authority as to this proposition and practically none has been pointed out to it by counsel.

The present incumbent of this bench has noticed some instances where costs and damages thus required to be paid in this island, have been lost to the party who finally recovered judgment in the Supreme Court of the United States, and, as part of the defendants have *have* a supersedeas bond, and it is claimed that the complainant is impecunious and could not respond in case of a reversal of the cause, even for the costs, the Court will not take any risk on it, and therefore an order will be entered staying the execution for costs for the time, as stated.

(Signed) B. S. RODEY, *Judge.*

1018 *Journal Entry* (*Sept.* 24, 1906).

In Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

The Court files an opinion herein, and in accordance therewith overrules the motion of certain defendants to open up the decree, to which said defendants except. The motion to stay the execution for costs is sustained.

1019 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Assignment of Errors.

Now come Victor Burset, Petronila Patricia Rios de Noya, Francisco Noya and Santiago Palmer 4 of the defendants and appellants in the above entitled cause, and assign the following as the errors committed by the court aforesaid in the course of the proceedings in said cause in said court:

I. The court erred in overruling the demurrers of these defendants filed to the original bill of complaint on August 3rd, 1903.

II. The court erred in making the order herein dated October 9, 1903, overruling all demurrers and allowing said original bill to be amended.

III. The court erred in allowing, by its order dated March 8, 1904, the filing of the amendment to the bill of complaint tendered after the filing of defendants' pleas.

IV. The court erred in overruling the pleas of these defendants by its order of October 7, 1904.

V. The court erred in compelling the defendants to elect whether they would avail themselves of the services of one Rafael Lopez Landron, an attorney of the court, in his professional capa-
1020 city as a lawyer, or as a witness in their behalf; and, after defendants had elected, under such compulsion, to use said Landron as a witness, in excluding him from the court room where the testimony was being taken, thereby depriving these defendants of one of their chosen counsel.

VI. The court erred in refusing to grant defendants' motion for a decree dismissing the bill at the conclusion of complainant's testimony as a witness in her own behalf.

VII. The court erred in overruling defendants' motion to be allowed to controvert the evidence on behalf of complainant on the issue of fraud and to have that issue determined before hearing evidence upon the case at large.

VIII. The court erred in overruling defendants' objection to the admission in evidence of the receipts for rent given by Manuela Gutman to the complainant for a certain plantation called "San José de las Mulas."

IX. The court erred in overruling defendants' objection to the admission in evidence of a certain document of pledge, marked "Exhibit J" by the Master.

X. The court erred in overruling the objection of defendants to the question "From your best judgment what was the value of those lands per acre in 1902?" asked of complainant's witness Strayer.

XI. The court erred in overruling defendants' motion, made at the conclusion of all testimony on behalf of complainant, to dismiss her said bill.

XII. The court erred in sustaining objections of complainant to the question "What was the reason that the agreement signed the night of the 16th of January was drawn in the shape of a
1021 private agreement and not at that time of a public document?" asked of defendants' witness Cuadra.

XIII. The court erred in sustaining the objection of complainant to the admission in evidence of the document offered by the defendant and marked "Exhibit 7 for Defendants."

XIV. The court erred in sustaining the objection of complainant to the admission in evidence of the document offered by the defendant and marked "Exhibit 8 for Defendants."

XV. The court erred in sustaining the objection of complainant to the admission in evidence of the Notarial draft of the private agreement, drawn by Notary Aldrey, marked "Exhibit 16 for Defendants."

XVI. The court erred in overruling the objections of defendants to the admission in evidence of the document marked "Exhibit Q for Complainant."

XVII. The court erred in overruling the objections of defendants to the leading questions asked by complainant of her witness which appear on page 237 of the record of Magee, Special Master.

XVIII. The court erred in overruling objections of defendants to questions asked of complainant as a witness in her own behalf as to how she acquired title to the tract of land known as "Braziles," which appear on pages 242 and 243 of the Report of Magee, Special Master.

XIX. The court erred in overruling the objections of defendants to the admission in evidence of the alleged copy of the Entry
1022 in Book 11 of Day Book, Folio 124, of the Registry of Property of Humacao, which is marked "Exhibit U for Complainant."

XX. The court erred in overruling motion of defendants to strike out that portion of the testimony of Vias Ochoteca, a witness for complainant, which referred to a conversation with Francisco Porrata, a witness for defendants, which appears on page 292 of the Report of Magee, Special Master.

XXI. The court erred in overruling the objections of defendants to the admission in evidence of a part of the record of the testamentary proceedings over the estate of José María Rios y Berrios, marked "Exhibit X for Complainant."

XXII. The court erred in allowing complainant, over the objection of defendants, to file the amendments to her bill of complainant, tendered in her behalf after the conclusion of the evidence for the purpose of making the same conform to the proofs.

XXIII. The court erred in finding as a fact from the evidence that all the properties described in the finding of fact numbered 3 were inherited by said José María Rios y Berrios from his father and mother.

XXIV. The court erred in finding as a fact from the evidence, as stated in its 4th finding, that Manuela Gutman had made no partition of the inheritance of her children prior to her death.

XXV. The court erred in finding as a fact from the evidence, as stated in its 7th finding, that complainant had never transferred or relinquished her title or interest in any of the property left by her father.

1023 XXVI. The court erred in finding as a fact, as further stated in its 7th finding, that the whole share of José María Rios 2nd was "bienes reservables," without finding that the same was subject to the claim of his mother Manuela Gutman for her portion of the "gananciales" and for services during the many years of her administration of the estate.

XXVII. The court erred in finding as a fact, as stated in its 8th finding, that at the death of José María Rios 1st there was no community property in which his widow had an interest.

XVIII. The court erred in finding as a fact that the interest of Manuela Gutman in the estate of her deceased husband, José María Rios 1st, was 8000 pesos and no more, and that during her administration she applied to her own use a sum greater than the amount of such interest.

XXIX. The court erred in finding as a fact, as stated in its 8th finding, that Manuela Gutman applied to her own use all the proceeds and profits of the entire estate of José María Rios 1st.

XXX. The court erred in finding as a fact, as stated in its 9th finding, that the private agreement of January 16th, 1901, was collusively drawn and the signature of complainant obtained thereto by misrepresentation and deception, and that there was no consideration for the same.

XXXI. The court erred in finding as a fact that complainant promptly repudiated said private agreement after discovering within a day or two the misrepresentation and deception practiced upon her.

1024 XXXII. The court erred in finding as a fact, as stated in its 9th finding, that complainant within two or three days after the execution of said private agreement notified her lawyer, Cuadra, that she had been deceived and repudiated the agreement.

XXXIII. The court erred in finding as a fact, as stated in its 11th finding, that attorneys Landron and Cuadra conspired to defraud complainant of her interest in her father's estate by the institution of the dominion proceedings.

XXXIV. The court erred in finding as a fact, as stated in its 12th finding, that the declaration of dominion was collusively obtained.

XXXV. The court erred in finding as a fact, as stated in its said 12th finding, that said proceedings for the declaration of a dominion title were carried on and concluded as *ex parte* proceedings.

XXXVI. The court erred in finding as a matter of law that the property described in the complainant's bill descended to the children of José María Rios without subjecting the same to the rights of the widow in the ganancial property.

XXXVII. The court erred in finding as a matter of law that said properties did not enter into or form a part of the conjugal society, and that said Manuela Gutman had no claim against said property upon the bases set up in the answer of the defendants.

XXXVIII. The court erred in finding as a matter of law that the alleged deception and misrepresentation practiced upon complainant were material and relevant to the determination of her rights.

XXXIX. The court erred in finding as a matter of law that the complainant could not devest her rights by a private agreement such as that admitted in evidence.

1025 XL. The court erred in finding as a matter of law that the District Court of Humacao was without jurisdiction to devest the complainant of her interest in the properties described in the bill, hence said declaration of dominion was null and void.

XLI. The court erred in finding as a matter of law that the Supreme Court did not pass upon the merits of complainant's appeal in said dominion proceedings, but dismissed the same for improper procedure in taking the appeal.

XLII. The court erred in finding as a matter of law that the complainant was at the date of said findings entitled to a one-half interest in the properties described in her bill.

XLIII. The court erred in finding as a matter of law that the inscriptions and conveyances specified in said findings were null and void.

XLIV. The court erred in entering a final decree herein in favor of the complainant and against these defendants, instead of entering a final decree dismissing complainant's said bill.

XLV. The court erred in denying the motion of these defendants to vacate and set aside its final decree, made on the ground of lack of jurisdiction by reason of the citizenship of the parties.

Wherefore, these defendants pray the honorable Supreme Court of the United States to examine and correct the errors assigned and for the reversal of the said decrees and orders of said District Court of the United States for Porto Rico, entered in the above entitled cause, and for the proper direction to said court to enter a
1026 decree dismissing complainant's bill of complaint.

And as in duty bound, they will ever pray.

VICTOR BURSET,
PETRONILA PATRICIA RIOS DE NOYA,
FRANCISCO NOYA, AND
SANTIAGO PALMER,
By N. B. K. PETTINGILL,
Their Solicitor and Counsel.

1027 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Praecipe for Transcript.

To the Clerk of said Court:

You will please prepare a transcript of record in this cause on behalf of the defendants Victor Burset, Petronila Patricia Rios de Noya, Francisco Noya and Santiago Palmer, to be filed in the office of the Clerk of the Supreme Court of the United States, under the appeal heretofore perfected to said Court, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

The same record as forwarded in the appeal case of the defendants Juan R. Garzot and Faustino R. Fuertes.

The motion made by these defendants to vacate the decree of the Court, and the order denying the same.

The appeal bond of these defendants.

The assignment of errors of these defendants.

Said transcript to be prepared as required by law and the rules of this Court and the rules of the said United States Supreme Court and to be on file at the office of the Clerk of said Supreme Court at Washington before —— —, 1906.

N. B. K. PETTINGILL,
Solicitor for Victor Buset, Petronila Patricia Rios de Noya, Francisco Noya and Santiago Palmer, Appellants.

1028 *Cost Bond.*

(Filed Sept. 24, 1906.)

Know all men by these presents, that we, Victor Burset, Petronila Rios de Noya, and Francisco Noya, as principals and Clementina Lugo Vda. de Gonzalez and Rafael Rexach, as sureties, are held and firmly bound unto Maria Rios de Rubio in the full and just sum of Five Hundred Dollars, to be paid to said Maria Rios de Rubio, her executors, administrators or assigns, for the payment whereof well and truly to be made, we do bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 26th day of August, 1906.

Whereas lately at a session of the United States District Court for Porto Rico, in a suit pending in that court between the said Maria Rios de Rubio as complainant and the said Victor Burset, Petronila Rios de Noya and Francisco Noya and Santiago R. Palmer and Juan R. Garzot and Faustino R. Fuertes, as co-partners under the

firm name of Garzot & Fuertes as defendants, a decree was rendered against all the said defendants; and the said defendants having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree in the aforesaid suit, and a citation directed to said Maria Rios de Rubio is about to be issued, citing and admonishing her to be and appear before said Supreme Court at Washington;

Now the condition of the above obligation is such that if the said Victor Burset, Petronila Rios de Noya and Francisco Noya shall prosecute their said appeal to effect and shall answer for and pay all costs which may be awarded against them, if they fail to make their plea good, then the above obligation is to be void, else to remain in full force and virtue.

(Signed) VICTOR BURSET. [L. S.]
" PETRONILA R. DE NOYA. [L. S.]
" FRANCS. NOYA. [L. S.]
" CLEMENTINA LUGO VDA. GONZALEZ. [L. S.]
" RAFAEL REXACH. [L. S.]

1029 UNITED STATES OF AMERICA,
District of Porto Rico:

Clementina Lugo Vda. Gonzalez and Rafael Rexach, being duly sworn say, each for himself, that he is worth in visible property within the Island of Porto Rico subject to levy under execution more than the sum of Five Hundred Dollars, over and above all debts, legal set-offs, and other liabilities.

(Signed) CLEMENTINA LUGO VDA. GONZALEZ.
" RAFAEL REXACH.

Sworn to and subscribed before me, the undersigned authority, this 26 day of August, 1906.

(Signed) F. DE LA TORRE,
[SEAL OF NOTARY.] *Notary Public.*

Approved this Sept. 24th, 1906.
(Signed) B. S. RODEY, *Judge.*

1030 In the District Court of the United States for Porto Rico.

No. 196. Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

I, H. H. Scoville, Clerk of the District Court of the United States for Porto Rico, do hereby certify that the foregoing one thousand and twenty nine pages (1029) numbered from 1 to 1029, inclusive,

are and constitute a true and correct copy of the record and proceedings in the above and therein entitled cause, called for by the praecipes of the parties therein set out for the purposes of this appeal, as the same remain of record and on file in the office of the Clerk of this Court.

In witness whereof, I have hereunto set my hand and affixed the Seal of said Court at San Juan, Porto Rico, this second day of October, 1906.

H. H. SCOVILLE,
Clerk of the District Court of the United States for Porto Rico.

[Seal United States District Court for the District of Porto Rico.]

Endorsed on cover: File No. 20,435. Porto Rico, D. C. U. S. Term No. 141. Juan R. Garzot and Faustino R. Fuertes, co-partners under the firm-name of Garzot & Fuertes, appellants, *vs.* Maria Rios de Rubio. File No. 20,436. Term No. 142. Victor Burset, Petronila Rios de Noya and her husband, Francisco Noya, appellants, *vs.* Maria Rios de Rubio. Filed October 24th, 1906. File Nos. 20,435 and 20,436.

1 In the District Court of the United States for Porto Rico.

At a stated term of the District Court of the United States for Porto Rico, began and held at the Court rooms of said Court in the city of San Juan, on the 8th day of October, in the year of our Lord One Thousand Nine Hundred and Seven, and of the Independence of the United States of America, the One Hundred and Thirty-second.

Present, the Honorable Bernard S. Rodey, Judge.

Among the proceedings had was the rendition of an Order of Revival on behalf of the heirs of Santiago R. Palmer, one of the defendants in the original suit of Maria Rios de Rubio *vs.* Victor Burset *et al.*, now pending on appeal before the Supreme Court of the United States, the petition for which order of revival is as follows, to wit:

2 In the United States District Court for Porto Rico. In Chancery.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

After Final Decree.

The petition of Catalina Romaguera, Elena Esther del Carmen Palmer y Romaguera, joined by her husband Juan Agostini, Santiago Bienvenido Palmer y Romaguera, Catalina Augusta Angela Palmer y Romaguera, joined by her husband Albert J. Dillon, Augusto Mariano Inocenta Palmer y Romaguera, and Rafael Maria Braulio Palmer y Romaguera, respectfully represents unto this honorable court that the final decree in the above entitled cause was not in fact promulgated and entered in this court until the 24th day of April, A. D. 1906, but that the same was by the court ordered entered *nunc pro tunc* as of the 19th day of February, A. D. 1906; that Santiago R. Palmer was one of the defendants named in the bill of complaint therein, filed his answer in the same, and remained a party defendant in said suit up to the time of his death which occurred in the city of San Juan, Porto Rico, on the 31st day of March, A. D. 1906, which was before said actual promulgation and entry of said final decree but after the date as of which said decree was entered *nunc pro tunc;* and that no suggestion of the death of said defendant Santiago R. Palmer has ever been made by the complainant in said cause, nor has the same ever been revived in the name of his heirs or legal representatives.

Your petitioners further represent that said Santiago R. Palmer died testate as to his real property; that, under the terms of his last will and testament, your petitioner Catalina Romaguera, who is his

widow, and petitioners Elena Esther del Carmen, Santiago Bienvenido, Catalina Augusta Angela, Augusto Mariano Inocente and Rafael Braulio Maria, (Palmer y Romaguera), who are his children, have inherited all his right, title and interest in the real property involved in said suit and described in said final decree therein; that said defendant Santiago R. Palmer had one other child, named Delila, but she died intestate and without issue and her interest descended to and became vested in your petitioners; and that your petitioners are therefore the proper legal representatives of said Santiago R. Palmer, deceased, in this suit.

Your petitioners further represent that they are all of full age and *sui juris* in all respects, except your petitioner Rafael Maria Braulio Palmer y Romaguera, who was born on the 26th day of March, A. D. 1889, for whom your petitioners ask that a guardian *ad litem* be appointed by this court in case said suit is revived as to the interest of said Santiago R. Palmer in the names of your petitioners.

Your petitioners further represent that the final decree rendered in this court in the above cause was against all the defendants, including the said Santiago R. Palmer; that all the defendants surviving at the date of the actual entry of said final decree, to wit: on the 24th day of April, 1906, have heretofore appealed therefrom to the Supreme Court of the United States where their said appeals are now pending; but that your petitioners are advised by counsel that said appeals may fail for want of parties unless said cause is revived as to said defendant Santiago R. Palmer in the names of his proper legal representatives so that they may join with the other defendants in appealing from said final decree; and that it is vital to the interests of your petitioners, as devisees and successors in interest of said Santiago R. Palmer, that a valid appeal be taken from said final decree and the same be reversed.

Wherefore your petitioners pray that this honorable court may grant an order reviving the said suit in the name of your petitioners as defendants in the place and stead of said Santiago R. Palmer, deceased, and restoring the same to the same plight and condition in which it was at the time of the entry of said final decree; that a guardian *ad litem* may be forthwith appointed for your infant petitioner, Rafael Maria Braulio Palmer y Romaguera; and that your petitioners may thereafter be entitled to all the rights and liabilities of the remaining defendants in said suit.

FRANK ANTONSANTI,
N. B. K. PETTINGILL,
Counsel for said Petitioners.

4 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

After Final Decree.

Order of Revival.

The petition of the legal representatives of Santiago R. Palmer, formerly a defendant in the above suit, now deceased, for the revival of said suit in their names as defendants, as successors in interest to said deceased defendant, for the purpose of joining in the appeal from the said final decree, coming on this day to be heard; and it appearing to the court from the allegations of said petition and from the record in this cause that said Santiago R. Palmer was a defendant in said cause until the same was submitted for final decree but died before such final decree was in fact promulgated and entered; that all the defendants surviving at the time of actual entry of said final decree have appealed therefrom, which appeals are still pending; that said cause has never been revived by complainant as against anyone representing the said interest of said defendant Santiago R. Palmer, deceased; and that the petitioners named in said petition are the proper legal representatives and successors in interest of said Santiago R. Palmer, deceased, and entitled, after decree entered, to have said suit revived for their own benefit in the taking of an appeal;

It is hereby ordered, that the above entitled suit, which has become abated as to the interest of said defendant Santiago R. Palmer in the manner set forth in said petition, do stand revived as to said deceased defendant in the name of the said petitioners, Catalina Romaguera, Elena Esther del Carmen Palmer y Romaguera joined by her husband Juan Agostini, Santiago Bienvenido Palmer y Romaguera, Catalina Augusta Angela Palmer y Romaguera joined by her husband Albert J. Dillon, Augusto Mariano Inocente Palmer y Romaguera, and Rafael Maria Braulio Palmer y Romaguera, as devisees and successors in interest of said Santiago R. Palmer, deceased; and that said above named defendants be entitled to the same rights and liabilities as the remaining defendants as to whom said suit did not abate and as said deceased defendant would have been had he lived.

5 And it is hereby further ordered, that the defendant Santiago B. Palmer, who is an attorney of this court and whose interests do not conflict with those of said infant defendant, Rafael Maria Braulio Palmer y Romaguera, be and he is hereby appointed guardian *ad litem* for said infant defendant for the purpose of such further proceedings herein as he may be advised is for the best interest of said infant."

Done and ordered in open court at San Juan this 22 day of January, A. D. 1908.

B. S. RODEY, *Judge.*

6 In the United States District Court for Porto Rico.

No. 196. Equity.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Petition of Appeal.

The defendants, Victor Burset, Petronila Patricia Rios, joined by her husband Francisco Noya, Juan R. Garzot and Faustino R. Fuertes, as copartners under the firm name of Garzot & Fuertes, Catalina Romaguera, Elena Esther del Carmen Palmer, joined by her husband Juan Agostini, Santiago B. Palmer, Catalina Augusta Angela Palmer, joined by her husband Albert J. Dillon, Augusto Mariano Inocente Palmer, and Rafael Maria Braulio Palmer, an infant, by his guardian *ad litem*, Catalina Romaguera, conceiving themselves aggrieved by the order and final decree made and entered in the above entitled cause on the 21st day of April, A. D. 1906, but dated *nunc pro tunc* as of the 19th day of February, A. D. 1906, wherein and whereby it was ordered, adjudged and decreed that the equities in said cause were in all respects with the complainant, Maria Rios de Rubio, and against all the defendants named in her said bill of complaint, and the said complainant was granted relief as prayed for in her bill of complaint and was declared to be the owner as against all these defendants of an undivided one-half interest in and title to all the real estate described in said bill and final decree, do hereby appeal from said final decree to the Supreme Court of the United States for the reason specified in the assignment of errors to be filed herein; and they pray that this their petition of appeal may be allowed upon the giving of a bond for costs in a sum to be fixed by the Court; and that a transcript of the record, proceedings and papers upon which said order was made not included in the transcript already transmitted upon the previous separate appeal of defendants Garzot & Fuertes, duly authenticated, may be sent to the Supreme Court of the United States as in such cases made and provided by law.

Dated at San Juan this 23rd day of January, 1908.

FRANK ANTONSANTI,
N. B. K. PETTINGILL,
Counsel for said Defendants.

7 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Order Allowing Joint Appeal.

The defendants Victor Burset, Petronila Patricia Rios, joined by her husband Francisco Noya, Juan R. Garzot and Faustino R. Fuertes, as copartners under the firm name of Garzot & Fuertes, Catalina Romaguera, Elena Esther del Carmen Palmer, joined by her husband Juan Agostini, Santiago B. Palmer, Catalina Augusta Angela Palmer, joined by her husband Albert J. Dillon, Augusto Mariano Inocente Palmer, and Rafael Maria Braulio Palmer, an infant, by his guardian *ad litem*, Catalina Romaguera, by their counsel Frank Antonsanti and N. B. K. Pettingill, having on this 22rd day of January, 1908, filed their joint petition of appeal in this cause; it is now hereby ordered that an appeal to the Supreme Court of the United States as prayed in said joint petition from the final decree heretofore entered herein be, and the same hereby is, allowed to said defendants jointly; and that a certified transcript of that part of the record, proceedings and papers in said cause filed subsequent to the record already transmitted to said Supreme Court be transmitted upon this appeal to said Supreme Court of the United States according to law.

It is further hereby ordered that the bond for costs upon this appeal is hereby fixed at the penal sum of Three Hundred Dollars.

Done and ordered in open court at San Juan, this 22d day of January, A. D. 1908.

B. S. RODEY, *Judge.*

8 In the United States District Court for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

Appeal Bond.

Know all men by these Presents, that we, N. B. K. Pettingill as attorney for Victor Burset, Petronila Patricia Rios and her husband Francisco Noya, Juan R. Garzot and Faustino R. Fuertes, as copartners under the firm name of Garzot & Fuertes, Catalina Romaguera, Elena Esther del Carmen Palmer and her husband Juan Agostini, Santiago B. Palmer, Catalina Augusta Angela Palmer and her husband Albert J. Dillon, Augusto Mariano Inocente Palmer and Rafael Maria Braulio Palmer, defendants in the above entitled cause, as principal, and F. Schlutter and John A. Wilson, as sureties, are held and firmly bound unto the said Maria Rios de Rubio, com-

plainant in said cause, and to her heirs, executors, administrators and assigns in the full and just sum of Three Hundred Dollars ($300), for the payment whereof well and truly to be made, we do bind ourselves, our heirs, executors and administrators, jointly and severally firmly by these presents.

Signed and sealed with our seals and dated this 27th day of January, A. D. 1908.

Whereas lately at a session of the United States District Court for Porto Rico, in a suit pending in that court between the said Maria Rios de Rubio as complainant and the said Victor Burset, Petronila Patricia Rios and her husband Francisco Noya, Juan R. Garzot and Faustino R. Fuertes, as copartners under the firm name of Garzot & Fuertes, and one Santiago R. Palmer, as defendants, a decree was rendered against all the said defendants; and whereas thereafter and before the taking of an appeal by said defendants the said Santiago R. Palmer died, and thereafter said cause was revived in the names of the above named Catalina Romaguera, Elena Esther del Carmen Palmer and her husband Juan Agustini, Santiago B. Palmer, Catalina Augusta Angela Palmer and her husband Albert J. Dillon, Augusto Meriano Inocente Palmer and
9 Rafael Maria Braulio Palmer, an infant, by his guardian *ad litem* the said Catalina Romaguera, as devisees and legal representatives of the said Santiago R. Palmer, deceased; and all the said named defendants having on the 22d day of January, 1908, obtained from said court an order allowing a joint appeal to the Supreme Court of the United States to reverse the final decree in the aforesaid suit, and a citation directed to said Maria Rios de Rubio has been issued, citing and admonishing her to be and appear before the said Supreme Court at Washington;

Now the condition of the above obligation is such that if the said Victor Burset, Patronila Patricia Rios, Francisco Noya, Juan R. Garzot, Faustino R. Fuertes, Catalina Romaguera, Elena Esther del Carmen Palmer, Juan Agostini, Santiago B. Palmer, Catalina Augusta Angela Palmer, Albert J. Dillon, Augusto Mariano Inocente Palmer and Rafael Maria Braulio Palmer shall prosecute their said joint appeal to effect and shall answer for and pay all costs which may be awarded against them, if they fail to make their plea good, then the above obligation is to be void, else to remain in full force and virtue.

N. B. K. PETTINGILL. [SEAL.]
F. SCHLUTTER. [SEAL.]
JOHN A. WILSON. [SEAL.]

Approved, Jan. 27, 1908.

B. S. RODEY, *Judge.*

UNITED STATES OF AMERICA, *District of Porto Rico:*

F. Schlutter and Jno. A. Wilson, being severally duly sworn, depose and say, each for himself, that he is worth more than the sum

of Three Hundred Dollars in visible property within the District of Porto Rico subject to levy under execution.

F. SCHLUTTER.
JOHN A. WILSON.

Sworn to and subscribed before me this 27 day of January, 1908.
JOHN L. GAY.

10 District Court of the United States for Porto Rico.

MARIA RIOS DE RUBIO
vs.
VICTOR BURSET ET AL.

I, John L. Gay, Clerk of the District Court of the United States for Porto Rico, do hereby certify the foregoing nine typewritten pages, numbered from 1 to 9 inclusive, to be a full, true and correct copy of that part of the record, proceedings and papers in said cause, filed subsequent to the record already transmitted to the said Supreme Court of the United States, as the same remain of record and on file in the Office of the Clerk of said Court.

In testimony whereof, I have hereunto set my hand and affixed the Seal of the District Court of the United States for Porto Rico, at San Juan, P. R., this 27th day of January, A. D. 1908.

[Seal United States District Court for the District of Porto Rico.]

JOHN L. GAY,
Clerk of the District Court of the United States for Porto Rico.

11 UNITED STATES OF AMERICA, *ss:*

The President of the United States to Maria Rios de Rubio and F. H. Dexter, her solicitor of record, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States at Washington, within sixty days from the date of this writ, pursuant to an order allowing an appeal duly entered and of record in the Office of the Clerk of the District Court of the United States for Porto Rico, in that certain cause in equity in that court, numbered 196, wherein Victor Burset, Petronila Patricia Rios joined by her husband Francisco Noya, Juan R. Garzot and Faustino R. Fuertes, as copartners under the firm name of Garzot & Fuertes, Catalina Romaguera, Elena Esther del Carmen Palmer joined by her husband Juan Agostini, Santiago B. Palmer, Catalina Augusta Angela Palmer joined by her husband Albert J. Dillon, Augusto Mariano Inocente Palmer and Rafael Maria Braulio Palmer, an infant, by his guardian *ad litem* Catalina Romaguera, are defendants and appellants and you are complainant and appellee, to show cause, if any there be, why the decree rendered

therein against said defendants and appellants, as in the said order allowing said appeal mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Bernard S. Rodey, Judge of the District Court of the United States for Porto Rico, and the seal of said court, at San Juan, Porto Rico, this 22nd day of January, A. D. 1908, and of the Independence of the United States the one hundred and thirty-second.

[Seal United States District Court for the District of Porto Rico.]

B. S. RODEY, *Judge.*

Attest:
JOHN L. GAY, *Clerk.*

Service of the above citation and receipt of a copy thereof admitted, this 25 day of January, 1908.

F. H. DEXTER,
Solicitor for Complainant and Appellee.

12 [Endorsed:] No. 196, Equity. Maria Rios de Rubio *vs.* Victor Burset *et al.* Citation. Filed Clerk's Office, United States District Court, January 25, 1908. John L. Gay, Clerk of the Court. By A. M. Bacon, Deputy. D. P. 155.

Endorsed on cover: File No. 21,007. Porto Rico D. C. U. S. Term No. 604. Victor Burset, Petronila Patricia Rios, joined by her husband, Francisco Noya; Juan R. Garzot and Faustino R. Fuertes, copartners under the firm name of Garzot & Fuertes; Catalina Romaguera *et al.*, appellants, *vs.* Maria Rios de Rubio. Filed February 6th, 1908. File No. 21,007.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 142.

VICTOR BURSET ET AL.

vs.

MARIA RIOS DE RUBIO.

Motion to Become Parties as Additional Joint Appellants.

Come now Catalina Romaguera, Elena Esther del Carmen Palmer y Romaguera, joined by her husband, Juan Agostini; Santiago Bienvenido Palmer y Romaguera, Catalina Augusta Angela Palmer y Romaguera, joined by her husband, Albert J. Dillon; Augusto Mariano Inocente Palmer y Romaguera, and Rafael Maria Braulio Palmer y Romaguera, an infant, represented by his guardian, Catalina Romaguera, by their counsel, N. B. K. Pettingill and George H. Lamar, and represent unto this honorable court that the final decree in the court below in the above-entitled cause, numbered 142 upon the docket of the present term of this court, was not in fact promulgated, signed, and entered in the court below until the 21st day of April, 1906, but was by that court ordered entered *nunc pro tunc* as of the 19th

day of February, 1906 (Record, bottom of page 599); that Santiago R. Palmer was one of the defendants named in the bill of complaint therein, filed his answer in the same, and remained a party defendant in said suit up to the time of his death, which occurred in the city of San Juan, Porto Rico, on the 31st day of March, 1906, as will fully appear from a certificate of said death in the Spanish language, duly attested by the proper municipal authorities of said city of San Juan, together with a true translation of the same into the English language, hereto attached as Exhibit "A" and made a part hereof; and that the date of the death of said defendant, Santiago R. Palmer, was before such actual signing and entry of said final decree, but after the date, as of which the same was entered *nunc pro tunc*.

That on the 21st day of April, 1906, the defendants Juan R. Garzot and Faustino R. Fuertes, as co-partners under the firm name of Garzot & Fuertes, took their separate appeal from said final decree to this court, which appeal is numbered 141 upon the docket of the present term; that on the same day last aforesaid, the remaining defendants then surviving, to wit: Victor Burset, Petronila Rios de Noya, and Francisco Noya, her husband, took their joint appeal from said final decree to this court, which is numbered 142, as aforesaid (Record, p. 600); that at the time of taking said appeals no suggestion of the death of said defendant, Santiago R. Palmer, had been made to the court below by the complainant in said suit, nor had any revival of said suit taken place as regards the interest of said deceased defendant so as to bring any heir or representative of said deceased defendant before the court, but such interest then remained wholly unrepresented; and that the parties so then appealing

caused the transcript of the record in said cause to be filed in this court on the 24th day of October, 1906.

That said defendant, Santiago R. Palmer, died testate as to both real and personal property, as will fully appear from a duly certified copy of his last will and testament in the Spanish language, together with a true translation of the same into English, hereto attached, as Exhibit "B" and made a part hereof; that, under the terms of said last will and testament, the said Catalina Romaguera, who is his widow, and the said Elena Esther del Carmen Palmer y Romaguera, Santiago Bienvendio Palmer y Romaguera, Catalina Augusta Angela Palmer y Romaguera, Augusto Mariano Inocente Palmer y Romaguera, and Rafael Maria Braulio Palmer y Romaguera, who are his children, have inherited and are now the owners of all the right, title and interest possessed by said Santiago R. Palmer in the real property involved in said suit and described in the final decree therein; that said defendant Palmer had one other child, named Delila, but she died without issue on the 30th day of January, 1906, as will fully appear from a certificate of said death in the Spanish language, duly attested by the proper municipal authorities of the city of San Juan aforesaid, together with a true translation thereof into English, hereto attached as Exhibit "C" and made a part hereof, and that said Delila Palmer died intestate and without issue, whereby her interests descended to and became vested in said Catalina Romaguera, and the parties last above named are therefore the proper legal representatives in this suit of said Santiago R. Palmer, deceased.

That said above-named parties are all of full age and *sui juris* in all respects, except said Rafael Maria Braulio Palmer y Romaguera, who was born on the 26th day of March, 1889,

and for whom his said mother, Catalina Romaguera, was duly appointed guardian *ad litem* by the court below (Record, p. 627).

That the above-named Catalina Romaguera, Elena Esther del Carmen Palmer y Romaguera, Santiago Bienvenido Palmer y Romaguera, Catalina Augusta Angela Palmer y Romaguera, Augusto Mariano Inocente Palmer y Romaguera, and Rafael Maria Brauho Palmer y Romaguera, as such devisees and representatives of the interests of said deceased defendant, Santiago R. Palmer, desire to join in and become parties as appellants to the appeal taken by the said Victor Burset, Petronila Rios de Noya, and Francisco Noya in said cause numbered 142, as the interests of said parties to reverse and set aside said final decree are identical with that of the present parties appellant in said appeal numbered 142 as aforesaid.

Wherefore said above-named parties, Catalina Romaguera, Elena Esther del Carmen Palmer y Romaguera, joined by her husband, Juan Agostini, Santiago Bienvenido Palmer y Romaguera, Catalina Augusta Angela Palmer y Romaguera, joined by her husband Albert J. Dillon, Augusto Mariano Inocente Palmer y Romaguera, and Rafael Maria Braulio Palmer y Romaguera, an infant, represented by his guardian, Catalina Romaguera, now here move the court that they be allowed to join in and become parties as additional joint appellants to the appeal docketed in this court as aforesaid as number 142, under or by analogy to the provisions of rule 15 of this court.

N. B. K. Pettingill,
George H. Lamar,
Solicitors for the Legal Representatives of Santiago R. Palmer.

EXHIBIT A.

Acta de Defuncion Numero 331, Santiago R. Palmer e Yrizarri.

En la Ciudad de San Juan, Puerto Rico, á las dos de la tarde del dia dos de Abril de mil novecientos seis ante Don Manuel Moraza Dias, Secretario del Municipio de la referida Ciudad y Encargado del Registro Civil, comparecio Epifanio R. Mesa, natural de San Juan, mayor de edad, estado vindo, profesion industrial, domiciliado en Santurce manifestando en calidad de encargado que Don Santiago R. Palmer é Yrizarri, natural de San German, de sesentitres anos de edad profesion sú oficio Notario y domiciliado en calle Allen 23, fallecio á las once delanoche del dia 31 de Marzo pasado en su domincilio á consecuencia de ataque de angina depecho segun certificacion facultativa que presenta para obtener la corespondiente licencia de interramiento En vista de esta manifestacion y de la certificacion facultativa acompanada, se extiende la presente acta consignandose en ella además de le expuesto por ce declarante y en virtud de las noticias que se han podido adquirrir, las circumstancias siguentes—Que el finado estaba casa do en el acto del fallecimiento con Da Catalina Romaguera; que era hijo legitimo de Gaspar y de Juana y que á su Cadaver se habrá de dar sepultura en el Cementerio de la Capital. Asi mismo se hace constar que deja cinco hijos llamados Ester, Santiago, Catalina, Augusta y Rafeul y no testo—Fueron testigos presenciales Gavino Dardal, industrial y Miguel Aracil, empleado, naturales y vecinos de esta Capital solteros y mayores de edad—Leida integramente esta acta por todos las personas que deben suscribirla, se estampo en ella el sello de la ciudad y la firmaron el Senor encargado, el declarante y los testigos—Manuel Moraza—Epifimo R. Mesa—Gavina Dardal—M. Aracil—Hay tres rubicas y un sello."

Don Manuel Moraza Diaz, Secretario del Municipio de San Juan y Encargado del Registro Civil de dicha Ciudad.

Certifico: que el anterior traslado es copua fiel y conforme consu original obrante al folio 403 del libro 14 de la Seccion de defunciones. Y para entregar á parte interesada, expido la presente en San Juan, P. R., a viente y tres de Octubre de mil novencutos siete—sobve raspado—once—vale.

MANUEL MORAZA.

(*Translation.*)

Certificate of Death #331, Santiago R. Palmer e Yrizarri.

In the City of San Juan, Porto Rico, at two o'clock in the afternoon of the 2nd day of April, 1906, before Mr. Manuel Moraza Dias, Secretary of said Municipality and Custodian of the Civil Registry, appeared Epifanil R. Mesa, a native of San Juan, of full age, widower, and workman by profession, domiciled in San Turse, stating in his capacity as such Custodian, that Mr. Santiago R. Palmer e Yrizarri, a native of San German, 63 years of age and a Notary by profession, domiciled in Allen Street #23, died at eleven o'clock on the night of the 31st day of March last past, at his home, in consequence of an attack of Angina Pectoris, according to a medical certificate which he presents in order to obtain the corresponding burial permit. In view of this statement and of the medical certificate accompanying the same the present certificate is made out, placing in it, in addition to what is expressed by the declaring party and by virtue of information which has been acquired, the following circumstances:

"That the deceased was married at the time of his death to Mrs. Catalina Romaguera; that he was the legitimate son of Gaspar and of Juana, and that his body will be buried in the cemetery of the Capitol. Likewise it is certified that he leaves five children called Esther, Santiago, Catalina, Au-

gusta and Rafeul and without a will. The witnesses present are Gavino Dardal, laborer, and Miguel Aracil, employee, both natives and inhabitants of this capitol, unmarried and of full age. This certificate to be literally read by all the persons who ought to subscribe it, the seal of the city is stamped upon it, and it is signed by the gentleman who is the Custodian, the declaring party and the witnesses."

MANUEL MORAZA DIAZ.
EPIFINAL R. MESA.
GAVINA DARDAL.
MIGUEL ARACIL.

(There are three rubrics and a will.)

Mr. Manuel Moraza Dias,' Secretary of the Municipality of San Juan, and Custodian of the Civil Registry of that City, certifies that the foregoing is a true copy, identical with its original, found at folio 403 of book 14 of the Division of deaths. And in order to deliver the same to an interested party I execute the present in San Juan, Porto Rico, on the 23rd day of October, 1907.

MANUEL MORAZA DIAZ.

(Seal of the Civil Registry.)

EXHIBIT B.

NUMO. 617.

Escritura de Testamento Otorgada por Don Santiago R. Palmer e Irizarry.

EN 9 DE JULIO DE 1892, MAYAGUEZ, P. R.

NUMERO SEISCIENTOS DIEZ Y SIETE.

En la Ciudad de Mayaguez á las cinco de la tarde del día nueve de Julio de mil ochocientos noventa y dos.

Yo Don Santiago Rosendo Palmer é Irizarry, Notario del Colegio del Territorio de Puerto-Rico, con estudio abierto,

en la calle de Mendez-Vigo, número cincuenta y tres de órden de población, á presencia de los testigos instrumentales Doctor Don Antonio Manrique de Lara, Doctor Don Salvador Mestre y Mora y Doctor Don Salvador Carbonell y Toro, mayores de edad y vecinos de esta Ciudad, que aseguran no estar comprendidos en ninguno de los casos de incapacidad determinados en los artículos seiscientos ochenta y uno y seiscientos ochenta y dos del Código Civil, digo:

Que soy natural de la ciudad de San Germán en donde nací el veinte y cinco de Febrero de mil ochocientos cuarenta y cuatro, y vecino de esta Ciudad, hijo legitimo de Don José Gaspar Palmer y Segarra, y de Doña Juana Antonia Irizarry y Acosta, difuntos, naturales y vecinos que fueron de dicha San Germán, he resuelto formalizar mi testamento en la forma resultante de las cláusulas siguientes:

Estado.

Primera: Declaro que contraje matrimonio en veinte y cinco de Noviembre de mil ochocientos setenta y uno en la parroquia de la Ciudad de San Germán, con la señora Doña Catalina Augusta Romaguera y Avila, y con la cual tengo seis hijos nombrados Elena Esther del Carmen, que nació el diez y ocho de Agosto de mil ochocientos setenta y cinco, Santiago Bienvenido Eugenio, el día seis de Septiembre de mil ochocientos ochenta, Catalina Augusta Angela, el primero de Octubre de mil ochocientos ochenta y uno; Augusto Mariano Inocente, el veinte y ocho de Diciembre de mil ochocientos ochenta y seis; Rafael María Braulio, el veinte y seis de Marzo de mil ochocientos ochenta y nueve, y Dalila Carlota Inés, el diez y nueve de Abril de mil ochocientos noventa.

Declaración Especial.

Segunda: Declaro que he tenido ni tengo, ningún hijo natural ó ilegitimo y sólo si los enarrados de mis únicas núpcias con la referida doña Catalina.

Aportaciones.

Tercera: Declaro asimismo, que mi esposa doña Catalina Romaguera y Avila, ha introducido á la sociedad conyugal por herencia de sus señores madre doña Augusta Isidora de Avila y Nazario, y de sus parientes Doctor Don Fabián de Avila y Doña Carmen de Avila, de Caracas, Venezuela, la cantidad de treinta mil pesos, sin que yo hiciese aportación alguna, y por lo tanto de lo que resultare corresponderme, ya por seguros de vida, ó por otro concepto, al fin de mis dias, se satisfará en primer término, dicho capital.

Legado.

Cuarta: Lego á mi citada esposa Doña Catalina Augusta Romaguera y Avila, el tercio de libre disposición de lo que resultaré corresponderme, sin perjuicio ademas de los derechos que le correspondente según ley, en usufructo.

Patria Potestad.

Quinta: Declaro que no obstante la menor edad de mis hijos mencion ados en la cláusula primera y de cualesquiera otros que pueda tener en mi matrimonio, es mi voluntad que aún contrayéndo segundas núpcias, mi esposa Doña Catalina Augusta Romaguera y Avila, conserve siempre la patria potestad sobre todos nuestros hijos.

Institución de Herederos.

Sexta: Instituyo por mis únicos herederos del remanente de mis bienes á mis hijos Doña Elena Esther del Carmen, Don Santiago Bienvendio Eugenio, Doña Catalina Augusta Angela, Don Augusta Mariano Inocente, Don Rafael María Braulio y Doña Dalila Carlota Inés Palmer y Romaguera.

Nombramiento de Albacea.

Séptima: Para cumplir y ejecutar este mi testamento y última voluntad, nombro por albacea con el caracter además de contador partidor, á mi citada esposa Doña Catalina Augusta Romaguera y Avila, para que ocurrido mi fallecimiento se apodere é incaute de mis bienes; los administre, reclame, cobre y perciba cuanto me pertenezca; dé recibos, cartas de pago, y cancele hipotecas, venda toda clase de bienes muebles é inmuebles, formalizándo toda clase de escrituras y contratos, verifique el inventario avalúo, liquidación, partición y adjudicación de bienes de todo cuanto sea necesario hasta la terminación de la testamentaría prorrogándole el plazo legal del albaceazgo por el mayor tiempo que necesitare para el cumplimiento de su cargo, procediendo en todo extrajudicial y amigablemente sin intervención alguna de los Tribunales de justicia, ni de ninguna autoridad, pues expresamente lo prohibe, salvo en lo preciso que manden las leyes y deba cumplirse para la aprobación de las operaciones testamentarias, si entonces existiesen menores como ahora, que haga precisa la aprobación, resolviendo mi albacea de pleno toda clase de dudas ó diferencias que pudieran suscitarse, obligándo á los interesados á estar y pasar por el acuerdo ó fallo de la testamentaría.

Revocación.

Octava: Por el presente revoco, anulo y dejo sin valor ni efecto, todo otro testamento anterior á éste y especialmente los que otorgué en veinte y cinco de Febrero di mil ochocientos ochenta y tres, y veinte y dos de Mayo de mil ochocientos ochenta y seis, por mi propia fé; pero si entre mis papeles apareciere alguna cédula ó memoria de fecha posterior á este testamento, otorgada por mi, escrita de mi puño y letra y que tenga por lema "La gratitud es la mas grande de la virtudes; la envidia y la calumnia tienen su asiento

en el corazón de los ingratos," quiero se tenga como parte integrante del mismo.

En fé de lo cual así lo otorgo y firmo á presencia de los testigos instrumentales que me conocen y aseguran que á su juicio estoy en el pleno goce de mis facultades intelectuales, y por lo tanto con la capacidad legal necesaria para testar, y firman previa lectura que les hice y enterados de su derecho para verificarlo por sí de que usaron: de todo lo cual y de haberse observado todas las formalidades ordenadas en la sección quinta, título tercero, libro tercero del Código Civil, en un solo acto, yo el Notario signo, firmo y rubrico por mi y ante mi de que doy fé—Por mi y ante mi—Signado Santiago R. Palmer.—Dr. Anto. Manrique de Lara.—Dr. Salvador Mestre y Mora—Dr. S. Carbonell.—

Corresponde bien y fielmente con su original que bajo el número seiscientos diez y siete, obra en el protocolo de instrumentos públicos correspondiente al año mil ochocientos noenta y dos. En fé de ello y á pedimento de Doña Catalina R. de Palmer, expido esta copia que signo y firmo en siete fojas de papel en Mayaguez á viente y seis de Octubre de mil novecientos siete.

Stamp.

[NOTARIAL SEAL.]

(Signed) LCDO. MARIANO RIERA PALMER.

(*Translation.*)

NUMBER 617.

In the City of Mayaguez at five o'clock of the afternoon of the 9th day of July, 1892. I, Don Santiago Rosendo Palmer E. Irizarri, a notary of the college of the Territory of Porto Rico, with open office in Mendez-Vigo Street number 53, in presence of the subscribing witnesses, Doctor Don Antonio Manrique de Lara, Doctor Don Salvador Mestre y Mora and Doctor Don Salvador Carbonell y Toro, of full age

and inhabitants of this City who assure me that they are not included within any of the incapacitated classes fixed in articles 81 and 682 of the Civil Code, say:

That I am a native of the City of San German where I was born on the 25th of February, 1844, and an inhabitant of this City, a legitimate son of Don Jose Gaspar Palmer y Segarre and of Dona Juana Antoine Irizarry y Acosta, both deceased, natives and inhabitants of said San German; I have resolved to execute my last will in the form shown by the following clauses:

CONDITION.

First, I declare that I contracted matrimony on the 25th day of November 1871 in the Parochial Church of said City of San German with Dona Catalina Augusta Roumagara y Avila, and with her I have had six children named Elena, Esther del Carmen, who was born August 18th, 1875, Santiago Bienvenibo Eugenia, on September 6th, 1880, Catalina Augusta Angela on October 1st, 1881, Augusto Mariano Inocente on December 28th, 1886, Rafael Maria Braulio on March 26th, 1889, and Dalila Carlota Ines on April 29, 1890.

SPECIAL DECLARATION.

Second, I declare that I have not had nor now have any natural or illegitimate child and only those born of my marriage with said Dona Catalina.

CAPITAL CONTRIBUTED.

Third, I declare likewise that my wife, Dona Catalina Romaguera y Avila, has brought to the conjugal partnership by inheritance from her mother Dona Augusta Isidora de Avila y Nazario, and from her relatives, Doctor Don Fabian de Avila and Dona Carmen de Avila, of Caracas, Vene-

zuela, the sum of thirty thousand pesos, without my having brought anything, and therefore from whatever may result as coming to me, whether from life insurance or other source, at the end of my days the above capital shall first be repaid.

DEVISE.

Fourth, I devise to my said wife, Dona Catalina Augusta Romaguera y Avila, that third part of what may result as corresponding to me which is subject to my free disposition, without prejudice to those rights which may belong to her in Usufruct according to the law.

GUARDIANSHIP.

Fifth, I declare that, notwithstanding the minority of my children mentioned in the first clause and of whatever others I may have during my marriage it is my will that, even in case of contracting a second marriage, my wife Dona Catalina Augusta Romaguera y Avila, may always retain guardianship over all our children.

HEIRSHIP.

Sixth, I name as my only heirs of the remainder of my property my children, Dona Ellena, Esther, Del Carmen, Don Santiago Bienvenido Eugenio, Dona Catalina Augusta Angela, Don Augusto Mariano Inocente, Don Rafael Maria Braulio and Dona Dalila Carlota Ines, Palmer y Romaguera.

EXECUTORSHIP.

Seventh, for the compliance and execution of this my testament and last will I name as executor also with the character of assessor my said wife Dona Catalina Augusta Romaguera y Avila in order that, as soon as my death

has occurred, she may take control of and inventory my property, administer it, sue for it, collect it, and receive whatever may pertain to me, give receipts and releases, cancel mortgages, sell every kind of property real or personal, executing all kinds of conveyances and contracts, verify the inventory, valuation, liquidation, partition and adjudication of whatever property may be necessary until the termination of the testamentary proceedings, extending the legal term of executorship for such longer time as may be necessary for the performance of her duties, proceeding in all respects extra judicially and in a friendly way without any intervention of the Courts or of any public authority, since it is hereby expressly prohibited, except in the necessary extent which the laws require and which must be complied with for the approval of the testamentary operations, if there should then as now exist minor children which may make necessary such approbation, my executrix being authorized to resolve by herself every kind of doubt or difference which may arise, the interested parties being obliged to abide by the decision made in the testamentary proceedings.

REVOCATION.

Eighth. By these presents I revoke, annul and leave without force or effect every other testament prior to this and especially those which I executed on the 25th day of February, 1883, and the 22nd day of May, 1886, under my own official signature; but if among their papers there should appear any note or memorandum of a date posterio to this will, executed by me, written in my own handwriting and with the following heading:

"Gratitude is the greatest of the virtues; envy and slander have their seat in the hearts of the ungrateful."

I desire that it may be taken as an integral part of the same.

In faith of which I thus execute and sign in the presence of the subscribing witnesses who know me and assure me that in their judgment I am in the full enjoyment of my intellectual faculties and therefore with the legal capacity necessary to make a will, and they sign after I have read it to them and inform them of their right to verify the same for themselves of which they made use: Of all of which and of their having been observed all the formalities specified in the fifth section, third title, third book, of the Civil Code, in one single act I, the notary, sign, subscribe and rubric by myself and before me, of which I certify.

By me and before me.

(Signed) SANTIAGO R. PALMER.
DR. ANTO. MANRIQUE DE LARA.
DR. SALVADOR MESTRE Y MORA.
DR. S. CARBONELL.

The foregoing corresponds exactly and faithfully with its original which, under the number 617, exists in the provocal of public instruments belonging to the year 1892.

In testimony of which and at the request of Dona Catalina R. de Palmer I issue this copy which I sign and subscribe on seven sheets of paper in Mayaguez this 26th day of October, 1907.

(Signed) LCDO. MARIANO RIERO PALMER.
[NOTARIAL SEAL.]

EXHIBIT C.

Acta de Defuncion.

NUMERO 97, DALILA CARLOTA INÉS PALMER Y ROMAGUERA.

En la ciudad de San Juan, Puerto Rico, a las tres de la tarde del dia trenta de Enero de mil noveciento seis, ante Don Manuel Moraza Diaz, Secretario del Municipio de la referida ciudad y Encargado del Registro Civil, compareció

Gabino Dordal, natural de San [illegible], mayor de edad, estado soltero, provecion industrial, domiciliado en la calle de Beneficencia, numero onse, manifestando en calidad de encargado que Doña Dalila Carlota Inés Palmer y Romaguera, natural de Mayaguez, edad quince años profesion á oficio in casa y domiciliada en la calle de Allen 23, fallecio á los cinco de la mañana del dia de hoy en su domicilio a consecuencia de Meningitis Tuberculosa segun certificacion facultativa que presente para obtener la correspondiente licencia de enterramiento—En vista de esta manifestacion y de la certificacion facultativa, acompañada, se extiende la presente acta, consiguandose en ella ademas de lo expuesto por el declarante y en virtud de los noticias que se hace podido adquirir las circumstancias siguentes—Que la finada estaba soltera en el acto del fallecumiento—Que era hija legitima de Santiago R. y de Catalina A., y que a su cadaver se habra de dar sepultura en el Cemeterio de la Capital. Asi mismo se hace constar que no deja nada—Fueron testigos presenciales Nicolas Sevillano y Concepcion Robles, ambos naturales y vecinos de esta Capital, solteros, industriales y mayores de edad—Leida integramente esta acta por todas las personas que deben suscribirla, le estampo en ella el sello de la ciudad y la formaron el Sr encargado, el declarante y los testigos—Manuel Moraza—Gabino Dordal—Nicolas Sevillano—Concepcion Robles.

Don Manuel Moraza Diaz, Secretario del Municipio de San Juan, y Encargado del Registro Civil de la misma.

Certifico—que la precedente es copia exacta del original de su contenido a que me remito y certifica y para entregar a parte interesada expido la presente en San Juan, Puerto Rico, á quince de Enero de mil novecientos ocho.

[SEAL.]

MANUEL MORAZA.

(*Translation.*)

Certificate of Death.

NUMBER 97, DALILA CARLOTA INÉS PALMER Y ROMAGUERA.

In the city of San Juan, Porto Rico, at three o'clock in the afternoon of the thirtieth day of January, nineteen hundred and six, before Mr. Manuel Moraza Diaz, Secretary of the Municipality of said city and in charge of the Civil Registry, appeared Gabino Dordal, resident of San Juan, of age, unmarried, by profession a business man, living at number eleven Beneficencia Street, stating that Miss Dalila Carlota Inés Palmer y Romaguera, who was born at Mayaguez, fifteen years of age, and residing at number 23 Allen Street, died at five o'clock in the morning this day at her residence, from Meningites Tuberculosa, as is shown by the certificate given by the physician, which he presents in order to obtain the corresponding burial license. In view of this statement and of the medical certificate which he produced this certificate is extended, setting forth therein, in addition to the above statements, that the deceased was unmarried at the time of her death. That she was a legitimate child of Santiago R. and Catalina A., and that her body shall be buried in the cemetery of this city. It is also stated that she leaves nothing. The witnesses to this were Nicolas Sevillano and Concepción Robles, both born and residents in San Juan, unmarried, and business men who are of legal age. The foregoing having been read to all of the parties that should sign it, the seal of the City was affixed thereto, and was signed by the undersigned, the party making the statements, and the witnesses. (Signed) Manuel Moraza.—Gavivo Dordal.—Nicolas Sevillano.—Concepción Robles.

Mr. Manuel Moraza Diaz, Secretary of the Municipality of San Juan and in charge of the Civil Registry thereof, do hereby certify that the foregoing is an exact copy of the original to which it refers, and in order to issue the same to an interested party I sign the foregoing in San Juan, Porto Rico, on the fifteenth day of January, nineteen hundred and eight.

[SEAL.]

(Signed) MANUEL MORAZA.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 142.

VICTOR BURSET ET AL.

vs.

MARIA RIOS DE RUBIO.

Notice of Motion to Become Parties as Additional Joint Appellants.

SIRS: Please take notice that the appellants in the above entitled cause will, at the beginning of the argument of said cause when reached, in open court, move this court to grant the foregoing motion to add the additional parties defendant, therein mentioned.

Dated Washington, D. C., February 26, 1908.

Very respectfully,

N. B. K. PETTINGILL,
GEORGE H. LAMAR,
Counsel for Legal Representatives of Santiago R. Palmer, Deceased, Fendall Building, Washington, D. C.

To FRANCIS H. DEXTER, Esq., and
FRED. D. MCKENNEY,
Counsel for Appellee, Washington, D. C.

Service accepted of copy of the aforesaid motion to add additional parties appellant this 27th day of February, 1908.

Counsel for Appellee.

Office Supreme Court, U. S.
FILED.
FEB 24 1908
JAMES H. McKENNEY,

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1907.

No. 141.

GARZOT & FUERTES, APPELLANTS,

vs.

MARIA RIOS DE RUBIO, APPELLEE.

No. 142.

VICTOR BURSET ET AL., APPELLANTS,

vs.

MARIA RIOS DE RUBIO.

No. 604.

CATALINA ROMAGUERA ET AL.

vs.

MARIA RIOS DE RUBIO.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLANTS.

N. B. K. PETTINGILL,
GEORGE H. LAMAR,
Counsel for Appellants.

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1907.

No. 141.

GARZOT & FUERTES, APPELLANTS,

vs.

MARIA RIOS DE RUBIO, APPELLEE.

No. 142.

VICTOR BURSET ET AL., APPELLANTS,

vs.

MARIA RIOS DE RUBIO.

No. 604.

CATALINA ROMAGUERA ET AL.

vs.

MARIA RIOS DE RUBIO.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF FOR APPELLANTS.

Statement.

The three foregoing appeals were taken from the same final decree entered in the District Court of the United States for Porto Rico on the 21st day of April, 1906, *nunc*

pro tunc, as of the 19th day of February, 1906. Nos. 141 and 142 are appeals first taken separately by two groups of defendants, and No. 604 is a joint appeal subsequently taken by all the defendants in the same suit. The suit was one in equity, filed by the appellee, Maria Rios de Rubio, in the court created by section 34 of the act of Congress approved April 12, 1900 (31 Stats., p. 84), establishing civil government in Porto Rico, and called by that act the District Court of the United States for Porto Rico.

Subsequent to the 19th day of February, 1906, the date as of which the above decree was entered *nunc pro tunc,* and prior to the 21st day of April, 1906, the date of its actual entry, one of the defendants, Santiago R. Palmer, died, but no steps were taken to revive the suit in the name of any representative of the deceased before the taking of the appeals in Nos. 141 and 142, nor have any such steps been taken at any subsequent time by the complainant below, appellee here. The effect of the decree was conceived by counsel for defendants below to be several as to the appellants in No. 141, and, as said appellants were desirous of superseding said decree as to their interests, a separate appeal was taken in their names on the 21st day of April, 1906 (Record, p. 600), and a supersedeas bond was by them duly given and approved in the amount fixed by the court (Record, p. 602). On the same date last aforesaid a joint appeal was taken by all the remaining defendants then surviving (Record, p. 600), which appeal was subsequently perfected by the giving of a cost bond without supersedeas, which was duly approved by the court (Record, p. 622).

Upon the petitions of appeal as thus made and allowed a transcript of the record of the cause was prepared and transmitted to this court, which was filed October 24, 1906. Subsequently, during the preparation of said cause for argument in this court, and before the expiration of two years from the entry of said final decree, doubts having arisen in the mind of counsel whether the case was properly before

this court in the absence of representatives of the deceased, Palmer, whether the decree from which said appeals had been taken was joint or several, and whether the representatives of Palmer could be brought before this court without a revival of the suit as to them in the court below, and the prosecution of an appeal to which they should jointly be parties, such revivor was effected in the court below; and, in light of the precedents in Earl *v.* Myers *et al.* (207 U. S. —) and other cases, the joint appeal in the names of all of the defendants, including the representatives of said Palmer, deceased, was sued out on the 22d day of January, 1908, which joint appeal is No. 604.

The suit was, in its nature, one praying the court below to intervene because of an alleged fraud perpetrated upon the complainant, to declare void a judgment of the Supreme Court of Porto Rico, to cancel certain conveyances as fraudulent and for other relief, and the substance of the bill of complaint, with its amendments, set forth the following case:

1. That before and at the time of the death of complainant's father, whose name was José Maria Rios y Berrios, he was the owner of a large amount of real and personal property in the vicinity where he lived, of which the tracts described in the bill of complaint formed a part; that his death occurred in the year 1875; and that he left surviving him a widow and three children, the names of the children being Maria, the complainant, Petronila Patricia, one of the defendants, who was at the time of this suit the wife of Francisco Noya, and a brother, José, who died soon after his father. The widow's name was Manuela Gutman.

It may be well to state here, by way of parenthesis, that by custom among the Spanish peoples a woman upon marriage retains her own family name, adding that of her husband to it with a "de" between, while children take the names of both parents, the father's being written first with

a "y," (and) between, so that the full names of these children were: Maria Rios y Gutman de Rubio, Petronila Patricia Rios y Gutman de Noya, and José Rios y Gutman, while the widow's full name was Manuela Gutman de Rios. Therefore, also, the name of the complainant as stated at the caption of the suit shows that she had been married to a man named Rubio, and that upon marriage the woman usually drops the name of the mother and replaces it with that of the husband. So much may be necessary for a proper comprehension by the court of the names as they appear in the record, sometimes in incomplete form.

2. That the administration of the father's estate was left in the hands of the mother until her death in 1902; and that meantime the mother remarried and had a second family of children whose name is Bustelo.

3. That the real property described in the bill of complaint was separate property of the deceased, José Maria Rios y Berrios, derived by inheritance from his father and mother and by purchase from his sisters with his separate funds—thus intending to distinguish it from property acquired during the marriage with Manuela Gutman, which would have the character of ganancial property.

4. That the son, José Rios y Gutman, died after said second marriage of his mother, but while still a minor, intestate, unmarried and without issue; that his mother had only a life interest in his share of his father's estate; and that complainant and her sister were the absolute owners of the other two-thirds of the father's estate, the mother having under the law no interest therein.

5. That after the death of the son and remarriage of the widow, in fact after the widow had administered the estate for nearly 25 years, after both daughters were grown and married, and after complainant had herself become a widow, no distribution of the estate of the father ever having been made, the two daughters began certain proceedings to com-

pel a distribution and accounting; but that, before such proceedings had far advanced, complainant's mother and sister Petronila, joined by the husband of the latter, unlawfully and fraudulently conspired to defeat the right and title of complainant to her one-half interest in all the property of her father by inducing her, under misrepresentation and deceit, to sign a certain private agreement, the exact date of which she could not state because her mother and sister had always refused to give her a copy of it.

6. That by said agreement the complainant, in consideration of her mother and sister releasing to her their interests in certain other property belonging to said estate, would release to her mother the full ownership of the particular tracts of land belonging to the estate, described in the bill of complaint, and that said agreement should be perpetuated in a public notarial document within forty-eight hours from its execution, but her mother and sister afterwards refused to execute the public instrument.

7. That in further pursuance of their fraudulent design her said mother and sister in the month of November, 1901, caused legal proceedings to be instituted in the District Court of Humacao for the purpose of having the interest of complainant in said properties described in the bill of complaint transferred to and established in her mother; that a lawyer named José Maria Cuadra, as her representative but without her authority, joined with the representatives of her mother and sister in having said private agreement carried out by procuring a dominion title by *ex parte* proceedings in the respective parts of the property which each was to have thereunder; and that when she found that said Cuadra was so acting against her wishes in enforcing this private agreement she dismissed him and employed another lawyer, named Vias Ochoteca, to represent her.

8. That said lawyer, Vias Ochoteca, then filed in her behalf, in said proceedings to obtain a dominion title, his opposition to the granting of the petition on the ground of

want of jurisdiction in the court to grant it as well as other grounds; that his contentions on behalf of complainant were wrongly and improvidently overruled, and that from the judgment against her said lawyer took an appeal to the Supreme Court of Porto Rico, which dismissed the same because not properly taken.

9. That said dominion proceedings were begun in her name by said lawyer Cuadra without her knowledge and consent, and for the fraudulent purpose on his part, conspiring as he was with her mother and sister and their attorneys, of depriving complainant of her rightful share in the property which she had inherited; that the decree entered by said District Court of Humacao upon said dominion proceedings was null and void because made without law or authority to support it; and that the registry of the title obtained by said decree was also illegal, null and void.

10. That her mother, after so obtaining an illegal and invalid title to the properties described as aforesaid, and in pursuance of a conspiracy with the other defendants (except Garzot and Fuertes) to deprive complainant of her claim to a share of said described properties, pretended to convey the same for a valuable consideration to the husband of one of her daughters by her second marriage, to wit: the defendant Burset, but that Burset gave no valuable consideration for the property; and that the sale was fraudulent and fictitious.

11. That, further conspiring to place said properties beyond the reach of complainant, said Burset conveyed the same properties to defendant Santiago Palmer, without any valuable consideration; that said Palmer afterwards, at the request of the mother and defendant Burset, conveyed 100 acres of one of the parcels of property to her defendant sister, Petronila, without any consideration and in pursuance of a previous understanding whereby said Petronila was induced to consent to, and stand by, said private settlement.

12. That, further pursuing the general conspiracy, Palmer also conveyed to the defendants Garzot & Fuertes that part of said described property consisting of 350 acres and known as "Cercado Ramirez," for the same fraudulent purpose and without consideration.

13. That the total area of said various tracts of land described in the bill was about 900 acres, and of a value of about $34,000, the valuation of each tract being separately alleged; and that all the defendants, including the firm of Garzot & Fuertes, were insolvent.

The bill of complaint prayed, in substance, that the private settlement and all the subsequent proceedings and the conveyances founded thereon be set aside and declared fraudulent and void; that the complainant be decreed entitled to the undivided interest she inherited in the whole estate of her deceased father and brother, as well those parcels allotted to her mother by said private settlement and described in her bill of complaint as those allotted to her and her sister; that an account be stated of the rents and profits of the whole inheritance and a division thereof made, and for other relief consistent with the allegations of the bill.

The original bill was not so detailed as the above, and to it some of the defendants demurred. Complainant then applied to amend, which was allowed, and then the demurrer to the bill as amended was overruled, which ruling is made the subject of one of the assignments of error. Certain pleas setting up the defense of *res judicata* were then filed and set for hearing as to their sufficiency. The bill was then again amended and thereafter the pleas were overruled, which action is also the subject of an assignment of error.

Thereafter defendants answered the bill, denying all the material allegations which allege fraud or illegality in said private settlement or in the proceedings and conveyances subsequent thereto, averring the free and voluntary execution of said settlement by the complainant and the validity of all subsequent proceedings, as well as the estoppel of the com-

plainant in regard thereto by her subsequent recognition of such settlement both in suits in court and acts *in pais*, and her affirmance thereof by acceptance of rights and benefits thereunder; and, in addition, set up the following affirmative defenses:

1. That the complainant was estopped from alleging fraud or invalidity in the private settlement referred to, except upon grounds and for reasons set forth in due season by her, after she had dismissed the lawyer, Cuadra, who she claimed had conspired to deceive her and had employed her present counsel, Vias Ochoteca; and that the various grounds and reasons, so then alleged, were severally passed upon and held of no avail by the Insular courts in which they were raised.

2. That the complainant was estopped from questioning the validity of the private settlement and other proceedings because she has subsequently ratified and confirmed the same, through her said lawyer Vias Ochoteca, by taking proceedings in court for the purpose of enforcing and benefiting by the same.

3. That the complainant had ratified said private settlement and the proceedings subsequent thereto, which she was in this suit attempting to set aside, by taking possession of, and exercising dominion over, the property adjudicated to her under said settlement, by leasing, mortgaging, and otherwise disposing of portions of the same.

4. And as to defendants Garzot & Fuertes, their answer set up a special defense that they bought the tract of land owned by them, called "Cercado Ramirez," after a decree of the Supreme Court of Porto Rico had affirmed a judgment of the trial court of Humacao decreeing that the title to that property was properly in the mother, Maria Gutman, and should be recorded in her name without any limitation of any kind, after said title had been duly recorded in her in obedience to said decree, and after conveyances, proper and valid on their faces, had been made from one party to another until a properly registered title vested in their grantor; that they

made their purchase in reliance upon such record title, after consulting counsel learned in the law who approved said title, and without any knowledge that it was further questioned; that they paid a fair price for the property as it was valued at the time of the purchase; that they had no knowledge of any further claim upon it on the part of complainant after said decree; and that, therefore, they claimed the protection given to all innocent purchasers for value.

To the various answers replications were filed by the complainant, and, thereafter, evidence was taken before the judge in person, by deposition outside of the jurisdiction, and before a master or examiner, who reported the same to the court. At the close of complainant's own testimony, she being the first witness examined on her own side of the case, defendants moved that her bill be dismissed because, the gist of the action being a fraud perpetrated on her and she having testified as to the circumstances claimed by her to constitute the fraud, her testimony had not only wholly failed to support the allegations of fraud but had shown affirmatively that no fraud in a legal sense existed—and without that element complainant was clearly not entitled to maintain her bill. This motion was denied, which ruling forms another assignment of error.

During the taking of the evidence before the judge in person, the rule excluding witnesses from the court-room when not testifying having been put in force, counsel for complainant requested the court to require Rafael Lopez Landron, who was counsel of record in the cause for some of the defendants and was seated with other counsel taking part in the conduct of the cause, and who had been stated to be an important witness for defendants, to retire from the room like the other witnesses or become disqualified to testify, whereupon the court ruled that defendants must elect whether said Landron should continue as counsel or should retire from the court-room in order to act as a witness, to which ruling defendants excepted and, being compelled

to their election, availed themselves of the services of Mr. Landron as a witness, whereby some of the defendants were deprived of the professional services of one of their chosen counsel.

At the conclusion of the evidence on behalf of complainant, counsel for defendants moved for a decree, dismissing the bill generally for lack of proof, and also counsel for defendants Garzot & Fuertes made a special motion for the dismissal of the bill as to them on the ground that the allegations of the bill, as against them, remained wholly unsupported by proof, which motions were severally denied, and these rulings form the basis for assignments of error.

On the 19th day of February, 1906, the judge announced that he had decided said cause in favor of complainant, but no written order or opinion was signed or filed. The October term of said court, which was then still in session, expired by limitation of law on the second Monday of April following, the same being the 9th day thereof, when the April term was fixed by law to open, and was opened, and no order was made continuing this case, or any matter then pending in said court, from the said October term over to the succeeding term; but on the 21st day of said April, 1906, and during said April term, the judge announced his findings of fact and conclusions of law in said cause, and signed and promulgated a final decree therein, reciting that the same were to be dated and entered "*nunc pro tunc* as of said February 19, 1906."

After the entry of this final decree, but during the continuance of the same April term of said court, 1906, defendants, except Garzot & Fuertes, who had perfected their appeal, moved the court to vacate the final decree and dismiss the cause for want of jurisdiction on the ground that, although jurisdiction appeared upon the face of the bill by the allegation that complainant was a subject of the King of Spain, it had developed from the testimony of complainant herself that such allegation was either an unintentional error or a fraud on the court, as it was clear that she did not

come within the class of Spanish subjects who, by the treaty of Paris, were allowed to retain their Spanish nationality. Affidavits were submitted upon the motion, and the court held in an opinion that complainant was under the law a Spaniard, that the court had jurisdiction, and, therefore, denied the motion—a ruling which forms another ground of our appeals.

After all the evidence for both parties was closed and the cause ready for argument, counsel for complainant moved the court for leave to amend her bill so as to conform to the proofs, the amendment tendered being an increase in the alleged value of each of the tracts of land described in the bill to more than double said value as up to that time alleged, which amendment was allowed to be filed over the objection of defendants, and this action of the court is complained of.

Assignment of Errors.

The errors of the trial court are here specified, as required by the rules of this court, as follows:

I.

The court erred in making the order herein, dated October 9, 1903, overruling the various demurrers of the defendants to the bill of complaint as amended on that day.

II.

The court erred in allowing, by its order dated March 8, 1904, the filing of the amendment to the bill of complaint tendered after the filing of defendants' pleas.

III.

The court erred in overruling the pleas of these defendants, and each of them, by its order dated October 7, 1904.

IV.

The court erred in compelling the defendants to elect whether they would avail themselves of the services of one Rafael Lopez Landron, an attorney of the court and engaged in the case as one of the counsel for defendants, in his professional capacity as a lawyer or as a witness in their behalf; and, after defendants had under such compulsion announced that they would use said Landron as a witness, in excluding him from the court-room where the testimony was being taken, thereby depriving defendants of one of their chosen counsel.

V.

The court erred in refusing to grant defendants' motion, made at the conclusion of complainant's testimony as a witness in her own behalf, for a decree dismissing her bill, because her own testimony as to the principal circumstances which she claimed to constitute a fraud and at which she herself was present clearly showed that no fraud had been committed.

VI.

The court erred in overruling defendants' motion to require evidence on behalf of complainant on the issue of fraud to be first produced, and thereupon to be allowed to controvert same by evidence on their behalf, and to have that issue determined before hearing evidence upon the case at large.

VII.

The court erred in overruling defendants' objection to the admission in evidence of a certain document of pledge, which was admitted and marked Exhibit J for complainant and is found on pages 258-259 of the printed record.

VIII.

The court erred in overruling the objections of defendants to the question, asked of complainant's witness Strayer, "From your best judgment what was the value of those lands per acre in 1902?" which question and answer is found on page 263 of the printed record.

IX.

The court erred in overruling defendants' motion, made at the conclusion of all testimony on behalf of complainant, for a final decree in favor of all of the defendants, which motion is found on page 272 of the printed record.

X.

The court erred in sustaining the objections of counsel for complainant to the question, asked by counsel for defendants of their witness Cuadra, "What was the reason that the agreement signed the night of the 16th of January was drawn in the shape of a private agreement and not at that time of a public document?" which is found on page 320 of the printed record.

XI.

The court erred in sustaining the objections of counsel for complainant to the admission in evidence of the document offered by defendants and marked "Exhibit 7 for defendants," which is found on page 368 of the printed record.

XII.

The court erred in sustaining the objections of counsel for complainant to the admission in evidence of the docu-

ment offered by defendants and marked "Exhibit 8 for defendants," which is found on pages 369 and 370 of the printed record.

XIII.

The court erred in sustaining the objections of counsel for complainant to the admission in evidence of the notarial draft of the private agreement, drawn by Notary Aldrey, and marked "Exhibit 16 for defendants," which is found on pages 492-495 of the printed record.

XIV.

The court erred in overruling the objections of counsel for defendants to the admission in evidence of the document, presented by complainant and marked "Exhibit Q for complainant," which is found on pages 524-528 of the printed record.

XV.

The court erred in overruling the objections of counsel for defendants to the leading questions asked of complainant as a witness in her own behalf touching the ownership of a certain forty-acre tract, which culminated in a question in the following form: "I don't think you understand my question; what I mean is that you knew that that portion of 40 acres had been purchased by the Succession Bustelo?" which rulings are found on page 535 of the printed record.

XVI.

The court erred in overruling the objections of defendants' counsel to the following question, asked of complainant as a witness in her own behalf: "Defendants have offered

in evidence a deed executed by you to José Toro Rios on Aug. 28, 1904, referring to the partition of the property named 'Braziles,' for the purpose of showing your ratification of the private agreement or basis of settlement; please explain from whom did you acquire this property?" which ruling is found on page 539 of the printed record.

XVII.

The court erred in overruling the objections of counsel for defendants to the admission in evidence of the alleged copy of the entry in day book No. 11, folio 124, of the Registry of Property of Humacao, presented by the complainant and marked "Exhibit U for the complainant," which proceeding is found on pages 561-563 of the printed record.

XVIII.

The court erred in overruling the motion of counsel for defendants to strike out that portion of the testimony of one Vias Ochoteca, a witness for complainant, which referred to a conversation with one Francisco Porrata, who had been a witness for defendants, the portion of said testimony being as follows:

> "Mr. Porrata said to me that Mr. Faustino Fuertes intended to use him as a witness in this case; that whether he was called by Mr. Fuertes or by ourselves as a witness he would be required to testify that the examination of the books of the registry of property made by Mr. Garzot was made subsequent to the presentation of the deed of sale made by Mr. Palmer to Messrs. Garzot & Fuertes which is the subject of this law suit, because he knew that there existed in his office an order from the court issued greatly prior and presented to the registry in which it was announced to all concerned—publicly, as the books of the registry are—that there existed a law

suit that may affect the titles of all the fincas or estates comprised in the contract or basis of transaction made by private document between Mrs. Manuela Gutman and her daughters Doña Petronila and Doña Maria Rios. I then asked him if it was true that he advised Mr. Fuertes to make that negotiation, and he then replied to me that knowing, as he did, the existence of this law suit, he could not honestly advise him to carry out that transaction; then he said to me that there existed an entry in the presentation of that order made in the office of the registry of property prior to the deed of sale to Mr. Fuertes and that it would be convenient for me for the purpose of the defense of Mrs. Maria Rios to request a copy—a certified copy—of that entry."

which proceeding is found on pages 564-565 of the printed record.

XIX.

The court erred in overruling the objections of counsel for defendants to the admission in evidence of the part of the record of the testamentary proceedings touching the estate of José Maria Rios y Berrios, presented by the complainant and marked "Exhibit X for the complainant," which is found on pages 571-577 of the printed record.

XX.

The court erred in allowing complainant, over the objection of counsel for defendants, to file the amendment to her bill of complaint, tendered in her behalf after the conclusion of all the evidence, for the purpose of making the allegations of her bill conform to the proof.

XXI.

The court erred in finding as a fact from the evidence that all the tracts of land described in finding of fact num-

bered 3 were inherited by said José Maria Rios y Berrios from his father and mother, whereas there was no evidence whatever properly before the court in support of such finding, but the uncontradicted evidence was that said tracts of land had been bought by him shortly before his death.

XXII.

The court erred in finding as a fact from the evidence, as stated in its 4th finding, that Manuela Gutman had made no partition of their inheritance between herself and her children prior to her death, whereas there was no evidence whatever before the court to support such finding, but the uncontradicted evidence was that such a partition had been made extra-judicially by the private agreement of January 16, 1901, and judicially ratified and confirmed by the Supreme Court of Porto Rico.

XXIII.

The court erred in finding as a fact from the evidence, as stated in its 7th finding, that complainant had never transferred or relinquished her title or interest in any of the property left by her father, whereas there was no proper evidence whatever to support such finding, but all the evidence properly before the court tended to show the validity of the private agreement aforesaid, by which certain property left by her father had been relinquished to her mother.

XXIV.

The court erred in finding as a fact, as further stated in said 7th finding, that the whole share of José Maria Rios 2nd (José Rios y Gutman) in the estate of his father was *"bienes reservables,"* without finding that the same was subject to the claim of his mother for her ganancial portion

and for compensation for her services during the many years of her administration of said estate, all the evidence tending to show that the said share of said son was subject to said claims.

XXV.

The court erred in finding as a fact, as stated in its 8th finding, that at the death of José Maria Rios y Berrios there was no community property in which his widow had an interest, whereas the uncontradicted evidence showed to the contrary, and there was no evidence whatever to support such finding.

XXVI.

The court erred in finding as a fact, as stated in the 8th finding, that the interest of Manuela Gutman in the estate of her deceased husband was 8,000 pesos and no more, and that during her administration of said estate she had applied to her own use from the funds thereof a sum greater than the amount of such interest, whereas there is no evidence whatever to support such finding.

XXVII.

The court erred in finding as a fact, as further stated in said 8th finding, that Manuela Gutman applied to her own use all the proceeds and profits of the entire estate of said José Maria Rios y Berrios after his death, whereas there is no evidence whatever to support such finding.

XXVIII.

The court erred in finding as a fact, as stated in its 9th finding, that the private agreement of January 16, 1901, was collusively drawn, and the signature of complainant obtained thereto by misrepresentation and deception, whereas there is no evidence legally sufficient to support such finding.

XXIX.

The court erred in finding as a fact that complainant promptly repudiated said private agreement after discovering within a day or two the misrepresentation and deception which had been practiced upon her, whereas there is no evidence to support such finding.

XXX.

The court erred in finding as a fact, as stated in its 11th finding, that attorneys Landron and Cuadra conspired to defraud complainant of her interest in her father's estate by the institution of the dominion proceedings, whereas there is no evidence legally supporting such finding.

XXXI.

The court erred in finding as a fact, as stated in its 12th finding, that the declaration of dominion was collusively obtained, whereas there is no evidence to support such finding but the uncontradicted evidence, including that of complainant herself, is that, long before the declaration of dominion was obtained, complainant was represented in those proceedings by counsel wholly unconnected with said alleged fraudulent conspiracy against her who had full opportunity for opposition to said proceedings and made use of such opportunity as he was advised.

XXXII.

The court erred in finding as a fact, as further stated in its said 12th finding, that said proceedings for the declaration of a dominion title were carried on and concluded as *ex parte* proceedings, whereas such a conclusion is inconsistent with the uncontradicted evidence in the case, and is an erroneous conclusion of law and not a conclusion of fact.

XXXIII.

The court erred in finding as matter of law that the property described in complainant's bill descended to the children of José Maria Rios y Berrios without subjecting the same to the rights of the widow in the ganancial property.

XXXIV.

The court erred in finding, as matter of law, that said properties did not enter into or form a part of the conjugal society, and that said Manuela Gutman had no claim against said property upon the bases set up in the answers of defendants.

XXXV.

The court erred in finding, as matter of law, that the alleged deception and misrepresentation practiced upon complainant were material and relevant to the determination of her rights.

XXXVI.

The court erred in finding, as matter of law, that complainant could not divest her rights by a private agreement such as that admitted in evidence.

XXXVII.

The court erred in finding, as matter of law, that the District Court of Humacao was without jurisdiction to devest complainant of her interest in the properties described in the bill of complaint in the proceeding to which she was a party, and hence that said declaration of dominion between the mother and two sisters so made in said proceeding was null and void.

XXXVIII.

The court erred in finding, as matter of law, that the Supreme Court of Porto Rico did not pass upon the merits of

complainant's appeal in said dominion proceedings, but dismissed the same for improper procedure in taking the appeal.

XXXIX.

The court erred in finding, as matter of law, that complainant was at the date of said findings entitled to a one-half interest in the properties described in her bill.

XL.

The court erred in finding, as matter of law, that the inscriptions and conveyances specified in said findings were null and void.

XLI.

The court erred in entering a final decree herein against defendants, instead of entering a final decree dismissing complainant's said bill for want of equity.

In addition to the foregoing, the following special assignments are made on behalf of Garzot and Fuertes, appellants in No. 141, which may not be applicable to the remaining appellants.

XLII.

The court erred in overruling the plea of *res judicata,* filed by said Garzot and Fuertes, by its order of October 7, 1904.

XLIII.

The court erred in overruling the motion, made on behalf of said defendants, Garzot and Fuertes, at the close of complainant's case to dismiss her said bill as to these defendants.

XLIV.

The court erred in finding as a fact as stated in its 15th finding, that the conveyance made by defendant Santiago

R. Palmer to said defendants Garzot and Fuertes of the tract of 350 cuerdas, called "Cercado Ramirez," was without consideration, whereas such finding was wholly unsupported by the evidence, while the uncontradicted evidence was that said defendants paid over fifteen thousand dollars for said tract of land.

XLV.

The court erred in entering a final decree herein in favor of the complainant as against said defendants Garzot and Fuertes, instead of entering a final decree dismissing complainant's bill as against them.

Also the following assignment, specially on behalf of appellants in No. 142, although made for and believed to be open to all:

XLVI.

The court erred in denying the motion of appellants, Victor Burset, Petronila Patricia Rios de Noya, and Francisco Noya, to vacate and set aside the final decree of the court below, on the ground of lack of jurisdiction, by reason of the citizenship of the parties as developed from the evidence in the cause.

It is not our intention to argue at length each one of the errors so assigned; but, on account of the doubt which may exist (as will be explained at the proper place in the argument) as to the proper method of bringing the case here for review, and as to the extent to which this court will consider the evidence presented to the court below and brought here, it was thought necessary to the proper protection of the rights of these appellants, who deeply feel that they were in effect denied a hearing in the court below, to place formally before this court a considerable number of the errors committed there, together producing convincing proof of the partiality and unfairness of the trial court. And we shall

ask the patience of the court while we discuss these different assignments of error, dividing them into groups for that purpose, sufficiently to show that they are in fact all well taken, many of them reversible errors in themselves, and that, in the majority of instances, the injurious effect upon the interests of the appellants was substantial and serious, and in the aggregate vital.

ARGUMENT.

I.

Jurisdiction.

As this court very properly holds it to be its duty to investigate, before going into a consideration of the merits of an appeal, first its own jurisdiction, then the jurisdiction of the court below (Mansfield, etc., Co. *vs.* Swan, 111 U. S., 382), we will first discuss these questions.

(A) The jurisdiction of this court on appeal.

As the District Court of the United States for Porto Rico is without doubt a territorial, as distinguished from a constitutional, court of the United States; and as the Civil Government Act, sec. 35 (31 Stats. at Large, 85), provides that "writs of error and appeals from the final decisions of * * * the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States;" it seems to follow that the *manner* of bringing the case here, as between writ of error and appeal, would be governed by the act of Congress of April 7, 1874 (13 Stats. at Large, 27), and, therefore, the case being one not tried by a jury, would be brought here by appeal. The same result would follow under the general rule, this being a case on the equity side of the court.

This court has already construed the *classes* of cases

which can be brought here from the United States Court of Porto Rico, under the above section of the Porto Rican act, holding that any case involving more than the sum of five thousand dollars, or where the judgment or decree is for more than that sum, can be so brought.

Royal Ins. Co. *vs.* Martin, 192 U. S., 149.

Each appeal clearly involves more than that amount, for according to the original allegations of complainant's bill the aggregate value of the parcels of property described was over $34,000, which was afterwards increased, by amendment, to over $70,000; while the tract "Cercado Ramirez," in which appellants Garzot and Fuertes are interested, was by the original bill alleged to be worth $15,000, afterwards increased by amendment to $35,000.

(B) The jurisdiction of the court below.

The extent of the jurisdiction of the federal court in Porto Rico, as fixed by the character of the parties to the suit—and that is the only point upon which any question can arise—has been the subject of much contention. The question is concededly governed by the provisions of an amendment to our Civil Government act, which was approved and became a law March 2, 1901, a little less than a year after the passage of the original act (31 Stats. at Large, 953), of which section 3 reads as follows:

> "That the jurisdiction of the district court of the United States for Porto Rico in civil cases shall, in addition to that conferred by the act of April twelfth, nineteen hundred, extend to and embrace controversies where the parties, or either of them, are citizens of the United States, or citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interest or costs, the sum or value of one thousand dollars."

From the time of the passage of this amendment until a decision which will be cited below, the bench and bar in

Porto Rico, depending upon the known intention of Congress to thereby enlarge the jurisdiction of that court, had construed the phrase "the parties or either of them" as though the word "parties" meant "litigants" and the word "either" were synonymous with "any," so that it was sufficient to sustain the jurisdiction if among the parties litigant on either side was found a single "citizen of the United States or citizen or subject of a foreign State." This was opposed to the contention that the word "parties" was used collectively and meant all the litigants on the one side or the other. So far as the lower court is concerned the question was set at rest by its decision in the case of Luis Vallecillo *et al. vs.* Bertran Hermanos *et al.*, holding with the latter view. We attach a copy of the opinion of Rodey, judge, as a supplement to this brief, believing that nothing can be added to what is therein said in support of that position.

If the decision of the court in the case last above referred to is correct the complainant must be determined to be a Spanish subject, else the jurisdiction fails, as there were several Porto Ricans among the defendants. We therefore pass to the consideration of that question:

(*a*) It is admitted that jurisdiction properly appeared on the face of the bill of complaint under the simple allegation that complainant was a subject of the King of Spain, but it afterward developed that complainant was born in the Western Hemisphere—either in Porto Rico or Mexico—(Opinion, Rodey, J., record, p. 615) and after the entry of the final decree, but at the same term, some of the defendants filed their petition to have said final decree vacated and the bill dismissed for lack of jurisdiction (Record, pp. 609-10) on the ground that, complainant not having been born in the Spanish Peninsula, she had become a citizen of Porto Rico under the Treaty of Paris.

It is well settled that, where citizenship of parties necessary to confer jurisdiction properly appears by the allegations

of the pleadings, but the evidence afterwards shows such allegations to be untrue, or the legal effect of the facts proven is doubtful, the question of the court's jurisdiction may properly be raised by motion after the closing of the proofs:

Steiglader *vs.* McQueston, 198 U. S., 142.

As a court may *sua sponte* investigate its jurisdiction at any time, and as it has at all times during the term as full control over its decree as it had over other proceedings before decree was entered, the fact that the petition was filed after, instead of before, decree can make no difference in our right to have it considered.

Henderson *vs.* Carbondale, etc. Co., 140 U. S., 25, 39.

Moreover, no question was made in the court below as to the propriety of the filing of the petition—and the court below did investigate, consider and decide it on its merits (Record, pp. 614-7). Therefore we are clearly entitled to a review by this court of that decision, which is the subject of the 46th, and last, assignment of error.

We shall, therefore, attempt to show to the court, from the record, that, however much the complainant considered herself a Spanish subject, and however earnest may have been her endeavors to conserve her nationality as such, she could not legally be so under the Treaty of Paris; and that, therefore, she being in law a "citizen of Porto Rico" and some of the defendants being also Porto Ricans, the court below had no jurisdiction.

(*b*) The facts as developed upon the hearing of the motion to vacate the decree, taking as true all the proofs offered on behalf of complainant, were briefly, as follows: That complainant was born in Mexico (although she had previously testified she was born in Porto Rico) of Spanish parents; that before the war between Spain and the United States she married an officer in the Spanish army; that they were living in Porto Rico at the time of the signing of the

Treaty of Paris; that her husband died after that date, but the exact time of his death is not shown; that before his death he attempted to preserve the Spanish nationality of both himself and his family by registering them in the Spanish consulate or vice-consulate; that complainant, after his death, renewed such registration on behalf of herself and children; and that at some time before the husband's death (no date appearing on the copy of the declaration, or in the certificate of the official making it, as to when it was made) he made a declaration before a municipal judge, possibly thinking he was complying with the Treaty (Record, pp. 611-7).

Upon this proof, taking it all as true, we submit that complainant has not shown that she was a person who *could* retain Spanish nationality under the Treaty, if she continued to reside in Porto Rico. The right of a government to regulate, or transfer, by treaty, the allegiance of its subjects, or to leave the determination of that question to the conquering power, is settled, not only as a principle of international law, but by the decision of this court.

Shanks *vs.* DuPont, 3 Pet., 246, 248.

The provision of the Treaty of Paris governing this subject is contained in Article IX thereof, which reads as follows:

> "Spanish subjects, natives of the Peninsula, residing in the territory over which Spain by the present treaty relinquishes or cedes her sovereignty, may remain in such territory or may remove therefrom, * * * In case they remain in the territory, they may preserve their allegiance to the Crown of Spain by making, before a court of record, within a year from the date of the exchange of ratifications of this treaty, a declaration of their decision to preserve such allegiance; in default of which declaration they shall be held to have renounced it, and to have adopted the nationality of the territory in which they may reside. The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by the Congress."

From the wording of this article it necessarily follows, as it seems to us, that the right to remain Spanish subjects (and at the same time residents of Porto Rico) was restricted to those who were *natives of the Peninsula,* and even such natives were not obliged to remain Spaniards—they were merely given the option so to remain; but, in order to exercise that option in favor of preserving their allegiance, certain positive action must be taken which involved three elements: (1) a written declaration, (2) before a court of record, (3) within one year from the exchange of ratifications.

Counsel for complainant, arguing in the court below, cited the proclamation, issued while Secretary Hay was in the State Department, that upon a question arising (from Cuba, we believe,) as to the status under the treaty of certain natives of the Balearic Islands, the two governments had been pleased to determine that the Balearic and Canary Islands should be considered as a part of the Spanish Peninsula for the purposes of this article; but any argument favorable to the complainant from this action is made impossible by the reasons given therefor, such reasons being that those islands might be considered a part of the peninsula on account of their proximity thereto, and in contradistinction from the *natives of the colonies of Ultramar.*

We submit, therefore, that the same result follows as to the legal status of complainant whether she was born in Porto Rico or Mexico. In neither case can she, by any stretch of the imagination, come within the terms of the treaty as a native of the Spanish Peninsula. It has been said, and perhaps is true, that Spain treated her subjects harshly in failing to make better provision and to obtain broader privileges concerning the preservation of their nationality, but that is a matter for the consideration of political departments, not of courts. It seems clear, under the terms of the treaty as made, that those Spanish subjects who were *not* natives of the peninsula were required to show their patriotism by withdrawing from the ceded territories or to lose their nationality.

It remains only to consider whether the marriage of complainant to a native of the peninsula who died before the beginning of this suit, and perhaps before the time arrived within which he might have preserved *his* status, served to place her in a better position in that regard. There is no indication in the language of the treaty that the declaration of a married man carried with it the same effect for his wife and children. If it did for his wife, it should logically for the children also, yet so to hold would be in direct contradiction of the succeeding provision that the status of all "native inhabitants" should be determined by the Congress. Take a case analogous to the present as an example: a native of the peninsula is married to a native of Porto Rico and has children, all born in Porto; if the wife or children are to remain Spaniards by virtue of the declaration of the husband and father, it is *not* left to Congress to determine the status of *all* the "native inhabitants."

But, more than that, it must be borne in mind that the marriage of complainant to the peninsular Spaniard caused *at that time* no change in her status, because they were then both equally Spaniards; and it seems to us, therefore, that after her husband's death, which occurred, according to her own testimony, on April 2, 1899 (Record, p. 82)—a date previous to the promulgation of the treaty—her status as a native either of Mexico or of Porto Rico, at least *not* a native of the peninsula, must be fixed as though she had never been married.

Counsel for appellee, the complainant, called attention in the court below to a certain military order of the military governor of Porto Rico (No. 132 of 1899) regulating the manner of making these declarations for the preservation of nationality and providing that the declarants should specify the names of their wives and children, if they had any. We think this was for the purpose of aiding in identification only, as is further shown by the inclusion of the names of father and mother as well as of wife and children. But even if it was intended otherwise by the military authorities,

we submit that it was not within their power to construe the meaning of this or any other treaty so as to bind the courts.

We therefore submit that the proofs did not bring the complainant within the classes of persons who were *allowed* to preserve their Spanish allegiance by the terms of the treaty above quoted.

(*c*) But even if complainant *could* have preserved her right to be a Spaniard, we claim that neither she nor her husband are shown by the proofs to have done so. As it required under the treaty action on their part, the burden is upon them to prove, when questioned, that such action was properly taken. Has complainant done so?

One class of proof was the action taken by both in the Spanish consulate (Record, pp. 613-614). Counsel in the argument below were driven to contend that a consulate was a "court of record" within the meaning of the treaty. This seems too extravagant to merit serious consideration. There are certain consular courts known to international law, but such are confined to semi-heathen lands where the civilized nations are not willing to trust their citizens to the mercies of the native tribunals; but we believe such courts must always be recognized by treaty with the country in which they exist.

The remaining proof produced was the alleged certificate of a declaration made by the deceased husband of plaintiff before the municipal judge at Humacao (Record, p. 612), but this fails to show the date on which such declaration was presented to said municipal judge, or certified to and recorded by the secretary of Porto Rico—the only date shown being that indicated as placed upon it by the declarant himself, a date which may have antedated the presentation to the judge by a month, six months, or a year—whatever was necessary to make it appear to have been done within the time limit. But as the treaty made it a condition of its efficacy that it must be *made before* the court of record within one year, this was not sufficient to sustain the burden; and, as an indication that it may not in fact have been

made within the year, it is noticeable that complainant studiously refrained from informing the court by the record evidence, so easy to obtain, what was the actual date of her husband's death, and from producing the certificate of any official as to the time of the filing of said alleged declaration. In fact, was not the court entitled to accept her own statement on page 82, above referred to, as sufficient proof that her husband died before the promulgation of said military order, or even of the treaty itself, and therefore that the document, of which only a copy was produced, was not genuine?

Moreover, while as before stated the names of the wife and children of the declarant, as well as the names of his father and mother, were set forth in his declaration conformably to the terms of the military order, above referred to, the wording does not include either or any of them in its effect, but is simply: 'The undersigned, born in the Spanish Peninsula, etc., desiring to preserve *his* allegiance," etc. This indicates no idea on the part of the declarant that he was preserving Spanish nationality for his wife and children, but the wording is clearly exclusive of such an idea.

(*d*) It will also be noticed that the Treaty required the necessary declaration to be made before "a court of record." The copy of the certificate introduced shows that it was simply signed in the presence of two witnesses and had impressed thereon the seal of the municipal court with the signatures of the judge and clerk of the same. There is no certificate to show that it was an act of the court as a court, or made a matter of record therein, or how, when, or where the seal and signatures were obtained.

In re Langtry, 31 Fed. Rep., 879.

In order to understand just what the municipal courts were and the distinction between these courts as such and the judges, it is necessary to consider the law under which they were constituted. As the declaration in question is ostensibly dated October 29, 1899, the appellee is estopped to question that as the true date; therefore the organization of the

municipal courts is to be determined by the provisions of General Order No. 118 of the Military Department of Porto Rico, issued by the military governor under date of August 16, 1899, but which had actually gone into effect a few days previous. The part of the order affecting the municipal courts begins with section 24, which, with material parts of succeeding sections, was as follows:

> "24. There shall be a municipal court in each municipal district. Each municipal court shall consist of one judge and two associate judges, who shall jointly decide and sign all the cases that have been properly brought before the court and determined by the same.
>
> "25. In criminal matters, municipal judges shall have cognizance in all misdemeanors established by the ruling penal code, as well as petty thefts, frauds, and offences against property in cases where the amount of the object of the offence or damages occasioned does not exceed five dollars U. S. currency, which offences shall be considered misdemeanors; with the exception of those comprised in article 538 of the penal code, which shall be judged by the corresponding district court. They shall also have cognizance in assaults where the healing of wounds caused shall have been completed in not more than fifteen days. In all these cases they shall apply the respective punishments stated by the code.
>
> "26. In civil matters municipal judges shall have cognizance of all litigation where the amount at stake between litigants does not exceed four hundred dollars, U. S. currency.
>
> "27. It shall also be the duty of municipal judges to prepare the preliminaries in criminal cases within the limits of investigation, substantial proof of punishable acts, their nature, gravity, and essential circumstances, search for the author or authors, their detention or imprisonment in accordance with the law and the seizure of the instruments of the crime or objects which might convict, in cases where such exist. These preliminaries must be practiced by municipal judges within the period of six days, after they receive the information that a crime has been committed. * * *

"30. The designation of the associates shall be made by lot in the following manner: Each municipal judge shall request the respective Alcalde to furnish him with a list of competent persons or residents with academic or professional diplomas, and of such persons as have held the position of Alcalde, councillor or muncipal judge, and another list of an equal number of municipal tax payers in the order of the amount paid, beginning with the largest amount. These lists, which shall be rectified or added to each year, shall include only persons of more than 21 years of age who know how to read and write.

* * * * * * *

"35. The associate judges whose turn it is, may have cognizance of all suits awaiting decision on the day corresponding to such turn, which suits shall not be passed on for the cognizance of other associates.

"In the act of the trial shall be stated the decision which shall contain the result of the voting and the resolution of the pending cases, without the form know as 'Resultando y considerando.'

"36. Against the decision of the municipal and associate judges free appeal will lie to the respective district courts. Recourse of appeal must be had within five days counting from the day following the notification of sentence."

We think it appears sufficiently plain from these extracts that even the municipal courts, when sitting as such, were in no proper sense "courts of record," and further that the judges exercised many functions independent of the court. It is further to be inferred, from the form in which this declaration of Rubio appears recorded in the office of the Secretary of Porto Rico, that the seal and signatures of the officials of the Municipal Court were placed upon the same, not for the purpose of making it a part of any record of said court, but with the idea that the same was necessary to insure its being recorded in the office of said Secretary.

Upon the question of whether such courts are courts of record, see the following:

Ellis *vs.* White, 25 Ala., 540.
Hutkoff *vs.* Demorest, 103 N. Y., 477.

We therefore submit that the ruling of the court upon the motion to vacate the final decree and dismiss the bill for want of jurisdiction was erroneous, and that the same should have been granted and the bill dismissed without prejudice to suit in such court as might have jurisdiction.

It appearing, therefore, from the Record, that the court below had no jurisdiction of this cause, appropriate action should be taken by this court looking to a dismissal of the bill of complaint.

II.

Error in Overruling Demurrers to Bill.

Having thus disposed of the question of the jurisdiction of the court below, we pass to the presentation of the errors assigned touching the merits of the controversy.

The first question logically presenting itself is that raised by the first assignment of error, the correctness of the ruling upon the demurrer filed to the original bill (Record, pp. 8-9), and we only wish to urge upon the court in this connection the general ground that there was no equity in the bill.

The court will see from the record that the original bill was filed on April 30, 1903, and the demurrer on August 3 following; that before the consideration of the demurrer, to wit, on October 6, 1903, complainant moved to amend her bill, tendering the amendments proposed (Record, pp. 9 to 13), and that three days later, on October 9, said demurrers were argued and an order was made (Record, p. 13) first allowing the amendment and then overruling all demurrers, and requiring complainant to rewrite her bill as theretofore amended and the defendants to plead thereto. This was

done, and the new draft or bill as amended was filed October 14 following. Hence this rewritten bill of complaint (Record, pp. 13-22) in effect is the pleading to which the demurrers were overruled, and we shall refer to its provisions as contained in the above pages in our argument of this general ground of demurrer.

Upon a careful perusal of this amended bill the court will find complainant's case as stated to be substantially as follows: That her father died in the year 1875, leaving a widow and three children, to wit, the complainant, her sister, Petronila, and a brother, José; that her father at the time of his death was the owner of a large amount of property, including various tracts described in the bill, aggregating in value some $34,000, which was his separate property derived by inheritance from his father and mother and by purchase from his sisters; that he left a power of attorney for his widow to make a will for him, by which all his property was devised to these three children in equal shares, and that his widow began the necessary and proper testamentary proceedings upon his estate, but the same reached only a preliminary state and were still pending at the time of the death of the widow.

That complainant at all times mentioned in the bill was the owner of a one-half interest in all the lands described in the bill, having acquired a one-third interest therein from her father under the terms of his will, and also one-half of the one-third interest of her brother José, who had died after the second marriage of their mother, intestate, unmarried, and without issue; that their said mother had married as a second husband one Bustelo, by whom she had had a second family, one of whom was the wife of defendant Burset; and that whatever rights complainant's brother José inherited in the estate of his father descended to and vested in his mother, subject, however, to defeasance after her death, leaving complainant and her sister Petronila his heirs, of which the mother had conducted proceedings, resulting in a declaration of such heirship in the proper court.

That in November, 1901, the mother of complainant, together with her sister Petronila and the latter's husband, fraudulently and unlawfully conspiring to defeat the title of complainant to the one-half of the property described in the bill, induced complainant, by misrepresentation and deceit, to enter into a private contract with her said mother and sister, whereby complainant, in consideration that her said mother and sister should set apart and concede to her the free and absolute enjoyment of certain property in said agreement described, would in turn convey to her mother her (the complainant's) interest in the properties described in said bill, which private contract was to be made the subject of a notarial document within 48 hours from its execution, but that complainant was unable to state the exact date of said agreement because her mother and sister had continuously refused to give her a copy thereof, and that they had failed and refused to carry out its provisions in that they had refused to execute the public notarial document, and had ever since refused to set apart and convey to complainant the property which they obligated themselves to convey to her in and by said private agreement.

That, in pursuance of the same fraudulent design, her said mother and sister, about the month of November, 1901, caused certain proceedings to be instituted in the Insular Court of Porto Rico for the purpose of having the interest and title of complainant in said described properties transferred to and established in her said mother; that said court proceedings were known as *expediente de dominio*, or summary and *ex parte* proceedings, to establish said title in her mother as aforesaid; that thereupon one Cuadra, an attorney-at-law, acting without authority from complainant, and coöperating with her said mother to deprive her, without authority of law, of the interest and title in said property, took some part in the proceedings, but without the knowledge or authority of complainant, and that thereupon said insular court, without authority of law and by a null and void decree, attempted to be based upon said private agreement

and without any other or further lawful reason, adjudicated the title of complainant to and in her said mother, and declared the latter to be the sole and absolute owner of said properties described in the bill, although the title to a one-half interest therein was in complainant.

The bill then alleges further that "all said proceedings and the decree or judgment of said Court of Humacao (insular court) therein were and are null, irregular, and void and of no force or effect," but that, notwithstanding such illegal decree or judgment, was duly inscribed in the register of property for that district. The remainder of the bill is taken up with allegations of voluntary or fraudulent transfers afterwards made by her said mother to Burset and, through mesne conveyances, to the other defendants in the suit; but it is not necessary, we take it, to follow these allegations in detail, as they are plainly incidental and subsidiary to those above set forth; as, if the judicial proceedings whereby the title was adjudicated to the mother, Manuela Gutman, were valid and binding, then the latter was clearly at liberty to sell or otherwise dispose of the property as she saw fit; and if the allegations of the bill touching the fraudulent or illegal character of those proceedings were insufficient to warrant that court of equity to set *them* aside, it clearly could not interfere with the subsequent actions of one whose title was absolutely founded thereon and guaranteed thereby. In other words, were it not for the allegations of fraud in the private agreement and illegality in the judgment of the court, the bill would contain not even an excuse for existence.

The question, therefore, simply is: Are the foregoing allegations of fraud and illegality sufficient to authorize the intervention of a court of equity? We submit that they are not.

(*a*) In the first place, the allegations are too vague and contain no specific facts. The court is asked to accept the conclusions of the pleader. In regard to the private agreement, the pleader is content to say that her mother and

sister were "fraudulently and unlawfully conspiring," and thereby "by misrepresentation and deceit induced your oratrix" to enter into it. In regard to the judicial proceedings, they were begun "in pursuance of said fraudulent design to deprive your oratrix of her just rights;" a certain attorney, "acting without authority from your oratrix and coöperating with said Manuela Gutman to deprive your oratrix, without authority of law, of her interest, etc., took some part in said proceedings," but without even alleging who he represented or what part he took, and the insular court, "without authority at law and by a null and void decree or judgment," "attempted to be based upon said private agreement and without any other or further lawful reason," adjudicated the title in favor of her mother. Surely these are not allegations of *fact*, but of the opinions and prejudices of the pleader or his client.

Circuit Judge McCreary has very happily expressed the requisites of pleading in cases of this kind:

> "A bill for relief on the ground of fraud must be specific. It is not enough to charge in general terms that a particular transaction was fraudulent. The facts constituting the fraud must be stated, so that the court, and not the pleader, may determine whether, if true, they constitute fraud. This rule applies to all bills for relief on the ground of fraud, including, of course, a bill to set aside a judgment or decree upon that ground."
>
> Brooks *vs.* O'Hara, 8 Fed. Rep., 529.

There are many other authorities to the same effect, some of the most pertinent being the following:

Voorhees *vs.* Bonesteel, 16 Wall., 29.
United States *vs.* Atherton, 102 U. S., 372.
Knox County *vs.* Harshman, 133 U. S., 152.

> "The words 'fraud' and 'conspiracy' alone, no matter how often repeated in a pleading, cannot make a case for the interference of a court of equity. Until

connected with some specific acts for which one person is in law responsible to another, they have no more effect than other words of unpleasant signification."

Ambler *vs.* Choteau, 107 U. S., 586.

It was upon these averments and in violation of the principles laid down by such authorities that the court below overruled our demurrer.

(*b*) But, passing now the question of form, we submit that these allegations of fraud and illegality, not in matter of technical form or detail, but of substance and essence, were not such as to give complainant standing in equity to impeach the judgment of a co-ordinate court.

The general principle that the judgments of such courts can not be impeached except for fraud will probably be admitted.

Voorhees *vs.* Bank of U. S., 10 Pet., 449.
Tilton *vs.* Cofield, 93 U. S., 163.
Mellen *vs.* Iron Works, 131 U. S., 352.

But it may be well in passing to refresh our minds upon the underlying reason as well as the importance of this principle and the sanctity which should surround the solemn judgments of courts, which can hardly be more forcibly and exactly expressed than by this court in Voorhees *vs.* Bank (*supra*):

"A judgment or execution irreversible by a superior court cannot be declared a nullity by any authority of law, if it has been rendered by a court of competent jurisdiction of the parties and the subject matter, with authority to use the process it has issued; it must remain the only test of the respective rights of the parties to it. If the validity of a sale under its process can be questioned for any irregularity preceding the judgment, the court which assumes such power places itself in the position of that which rendered it, and deprives it of all power of regulating its own practice or modes of proceeding

in the progress of a cause to judgment. If after its rendition it is declared void for any matter which can be assigned for error only on a writ of error or appeal, then such court not only usurps the jurisdiction of an appellate court, but collaterally nullifies what such court is prohibited by express statute law from even reversing. * * *

"The line which separates error in judgment from the usurpation of power is very definite, and is precisely that which denotes the cases where a judgment or decree is reversible only by an appellate court, or may be declared a nullity collaterally, when it is offered in evidence in an action concerning the matter adjudicated, or purporting to have been so. In the one case, it is a record importing absolute verity; in the other, mere waste paper: there can be no middle character assigned to judicial proceedings, which are irreversible for error. Such is their effect between the parties to the suit, and such are the immunities which the law affords to a plaintiff who has obtained an erroneous judgment or execution. It would be a well merited reproach to our jurisprudence if an innocent purchaser, no party to the suit, who had paid his money on the faith of an order of a court, should not have the same protection under an erroneous proceeding as the party who derived the benefit accruing from it" (pages 474, 475).

It is now necessary to determine for what frauds a court will set aside the judgment of another of co-ordinate jurisdiction—for not every kind of fraud will avail. In a case decided by this court in 1875 the allegations of the bill were that one Richardson had filed his petition before the Board of Commissioners of Private Land Claims asking confirmation of a certain Mexican land grant and after the filing of said petition, fearing that his proofs were insufficient, had gone to Mexico and corruptly obtained the signature of a certain official to a grant which was fraudulently antedated so as to impose it upon the court as a genuine document; and that he did so impose it together with certain perjured affidavits and obtained by such fraudulent

means a confirmation of his grant to which he was not entitled. In considering complainant's right to relief under these allegations, this court first stated the general rule as to fraud in the following way:

> "There is no question of the general doctrine that fraud vitiates the most solemn contracts, documents and even judgments. There is also no question that many rights originally founded in fraud become—by lapse of time, by the difficulty of proving the fraud, and by the protection which the law throws around rights once established by formal judicial proceedings in tribunals established by law, according to the methods of the law—no longer open to inquiry in the usual and ordinary methods. Of this class are judgments and decrees of a court deciding between parties before the court and subject to its jurisdiction, in a trial which has presented the claims of the parties, and where they have received the consideration of the court."

The court then refers to the "admitted exception" to this general statement and after discussing specific instances where relief would be warranted (one of them being where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat), defines this exception as follows:

> "* * * these and similar cases which show that there has never been a real contest in the trial or hearing of the case, are reasons for which a new suit may be sustained to set aside and annul the former decree, and open the case for a new and a fair hearing (citing authorities).
>
> "In all these cases, and many others which have been examined, relief has been granted, on the ground that, by some fraud practiced directly upon the party seeking relief against the judgment or decree, that party has been prevented from presenting all his case to the court.
>
> "On the other hand, the doctrine is equally well settled that the court will not set aside a judgment because it is founded on a fraudulent instrument, or

perjured evidence, or for any matter which was actually presented and considered in the judgment assailed. Mr. Wells, in his very useful work on *Res Adjudicata*, says, sec. 499:

"Fraud vitiates everything, and a judgment equally with a contract; that is, a judgment obtained directly by fraud, and not merely a judgment founded on a fraudulent instrument; for, in general, the court will not go again into the merits of an action for the purpose of detecting and annulling the fraud." * * *

Then, after citing and discussing authorities, the court continues:

"We think these decisions establish the doctrine on which we decide the present case, namely: * * * That the mischief of retrying every case in which the judgment or decree rendered on false testimony, given by perjured witnesses, or on contracts or documents whose genuineness or validity was in issue, and which are afterwards ascertained to be forged or fraudulent, would be greater, by reason of the endless nature of the strife, than any compensation arising from doing justice in individual cases."

United States *vs.* Throckmorton, 98 U. S., 61.

The general rule was clearly and tersely stated by Chief Justice Marshall in Marine Ins. Co. *vs.* Hodgson, 7 Cranch, 332, and has been reiterated and applied to varying circumstances in a long series of decisions of this court, many of which are cited in No. Chicago, etc., Co. *vs.* St. Louis, etc. Co., 152 U. S., 596, 615. It has naturally been often under consideration in the lower courts in cases which have not come before this court for review, and some of the most instructive are among the following:

Pacific R. R. *vs.* Mo. Pac. Ry. Co., 14 Fed. Rep., 642.
Smith *vs.* Livingston, 4 C. C. A., 130.
Thompkins *vs.* Drennen, 6 C. C. A., 83.
Ritchie *vs.* McMullen, 25 C. C. A., 50.
Town of Andes *vs.* Millard, 70 Fed. Rep., 515.

It has been adopted in England, is recognized by the State jurisdictions, and laid down in the text books:

Black on Judgments, sec. 369.
Bateman *vs.* Willoe, 1 Sch. & L., 201.
Dringer *vs.* Railway Co., 42 N. J. Eq., 573.
Hamilton *vs.* McLane (68 S. W.), 169 Mo., 70.
Mayor of N. Y. *vs.* —— ——, 115 N. Y., 615.
Irvine *vs.* Leyh, 102 Mo., 200.

The only attempt to allege fraud in the case at bar was that fraud or deceit which induced the execution of the "private agreement;" and certainly the above authorities show, if anything can be shown, that fraud in the origin or execution of documents which are subsequently produced in evidence cannot be the foundation for setting aside a judgment or decree. The allegation concerning the lawyer, Cuadra, who "took some part in the proceedings" is too indefinite to understand, much less to found any action upon. Therefore there remains, as the basis for the bill, only the other allegation, that of want of authority in the District Court of Humacao to entertain such a suit.

(*c*) Was the District Court of Humacao without jurisdiction to entertain the proceeding called "expediente de dominio"?

This is easily determined by turning to the official translation of the "Mortgage Law" (War Department, 1899), which was put in force in Cuba and Porto Rico in 1893, of which article 395 reads as follows:

> "Any person in possession, who shall not have a written title of ownership, without regard to the period the acquisition took place, may record said ownership by complying with the following formalities:
>
> "1. He shall present to the judge of First Instance of the subdistrict in which the estates are located, or to the one in whose district the principal part thereof is located, if it is an estate situated in various subdistricts, explaining the manner in which he acquired

them, and the legal proofs which he can offer of said acquisition, and requesting that, with the citation of the person from whom said property was acquired, or his legal representative, and of the Department of Public Prosecution, the proofs mentioned be admitted and his right declared.

"2. The judge shall give a copy of this document to the Department of Public Prosecution, shall cite the person from whom the property was acquired, or his legal representative, should he be known, and the persons who have any property right in said property; he shall admit all the pertinent proofs which may be offered by the claimant, by the interested persons cited, or by the Department of Public Prosecution, within the period of one hundred and eighty days, and he shall issue a call for the unknown persons whom the desired record might prejudice, by means of proclamations posted in public places, and which shall be published three times in the official papers of the proper colony, so that they may appear, if they desire to substantiate their claim.

"If the persons to be cited should be absent, the procedure established for citations in rule number 5 of Article 391 shall be pursued.

"3. After said period has elapsed, the judge shall take cognizance of the claims and proofs submitted, in writing, to the Department of Public Prosecution, or to others taking part in the suit, and in view of their allegations, and deciding on said proofs with an impartial judgment, he shall declare whether the ownership of the property in question is proven or not.

"4. The Department of Public Prosecution, or any of the persons intersted, may appeal from this decision, and, should they do so, the appeal shall be conducted in the manner prescribed for proceedings in the nature of a demurrer by the Law of Civil Procedure.

"5. If said decision is agreed to or confirmed, it shall be sufficient title for the record of the ownership.

"6. When the value of the realty does not exceed 1,000 pesos, the proceedings which, according to rule 3, must be submitted in writing to the Department of Public Prosecution and to the persons interested, shall

be oral; and the appeal, should one be taken, shall be in accordance with the procedure established for these appeals in actions for small amounts."

That the district courts succeeded to the jurisdiction and powers conferred by the above law upon judges of first instance is shown by the following general orders of the military governors, first: Order No. 1 of 1898, dated October 18 (Par. 9), which reads:

> "IX. The provincial and municipal laws, in so far as they affect the settlement of the private rights of persons and property and provide for the punishment of crime, will be enforced unless they are incompatible with the changed conditions of Porto Rico, in which event they may be suspended by the department commander. They will be administered substantially as they were before the cession to the United States. For this purpose the judges and all other officials connected with the administration of justice who accept allegiance to the United States will administer the laws of the land as between man and man, but in cases of the non-acceptance of such allegiance, or malfeasance in office, or for other cause, the department commander will exercise his right of removal and the appointment of other officials. To aid in executing the provincial and municipal laws the present local constabulary and police will be preserved as far as practicable and necessary, provided their allegiance to the United States is assured."

And, second, General Order No. 118 of 1899, dated August 16 (Par. 14), which reads:

> "Business in progress before courts of instruction and 1st instance courts shall be turned over with due formalities to the district courts corresponding to each respective judicial district."

Also to section 33 of the act of Congress, creating a civil government for Porto Rico (31 Stats. at Large, 85).

This general jurisdiction of the District Court will, we believe, not be denied by counsel for the appellee; but they will

contend that the power to grant these "titles of ownership" did not give those courts power to transfer title from one person to another, as it is alleged was done here; but we submit there are two answers to that proposition: First, there was no allegation sufficiently clear and explicit, as the court was one of general jurisdiction, to show that such action was in excess of jurisdiction; and, second, if the court had general jurisdiction of such suits, any particular judgment rendered therein involved, not a want of jurisdiction, but the erroneous exercise of it. We shall have occasion to discuss this particular proposition more fully under the succeeding assignment, to which we refer.

We therefore confidently submit that the demurrers to the bill of complaint, as it stood amended on October 9, 1903, should have been sustained and the bill then and there dismissed for want of equity, without the privilege of amendment, because it showed upon its face that no amendment, consistent with the allegations it then contained, could cure its defects.

III.

Res Judicata.

Under this head may be discussed jointly the assignments of error numbered 2, 3 and 42.

The second assignment is that the trial court should not have allowed, by its order of March 8, 1904, the amendment of the bill which was tendered to avoid the effect of defendant's several pleas of *res judicata;* the third is that these several pleas of *res judicata* should not have been overruled; and the forty-second, inserted merely out of an abundance of caution, is that the separate plea of *res judicata* filed by defendants Garzot & Fuertes should not have been overruled.

As regards the second assignment, we willingly recognize the general rule that the allowance of amendments to pleading is largely within the discretion of the court, but our objection was founded upon a well-recognized exception: that

amendments will not be allowed which are composed of immaterial matter, or which, considered in connection with the pleading to which they are offered, do not make out a good case or defence (as the case may be).

This amendment was clearly, and confessedly, offered for the purpose of avoiding the effect of the pleas of *res judicata* (Record, p. 42, paragraphs 2 and 3). If, then, its averments were not sufficient to show the right of this court of equity to interfere with the judgments pleaded in bar, such amendment should not have been allowed. The correctness of that ruling depends, therefore, upon the same considerations as the sufficiency of said pleas, and the discussion will cover both points.

Three pleas of *res judicata* were filed, one jointly by defendants Burset and Palmer, one jointly by defendants Garzot & Fuertes, and a third by defendants Petronila Patricia Rios and her husband, Francisco Noya. That filed by Garzot & Fuertes (Record, p. 35) was practically identical with that of Burset and Palmer (Record, p. 32), but that filed by Petronila, the sister of complainant, and her husband (Record, p. 22) set up an entirely distinct adjudication as a defence.

We ask the court to consider these defences with care, because we firmly contend that at this point should have been the conclusion of the whole matter.

The respective pleas interposed by defendants Burset and Palmer jointly (Record, p. 32) and by defendants Garzot & Fuertes jointly (Record, p. 35) were made thus separately because of the difference in the remaining defences to be interposed, if the case should not be disposed of on these pleas, as well as because of the difference in their respective answers in support of said pleas; but the allegations of each of them were identical, and were in substance as follows:

That defendants derived their title to the property in controversy through a valid conveyance, made about the 30th day of April, 1902, from Manuela Gutman to the defendant Victor Burset; that on April 26, 1901, the said Manuela

Gutman, together with the complainant and the defendant Petronila Patricia Rios, who were daughters of said Manuela, presented their petition to the Insular District Court of Porto Rico for the District of Humacao, praying that said court would declare valid their title of dominion to various rustic estates in said petition described, the title to some of them to be declared in the name of said Manuela and that of others in the names of said two daughters in equal parts; that said petition alleged that said properties described therein had been derived by petitioners from José Rios y Berrios, the husband of the one and father of the others, and had been divided by virtue of a private settlement made between them, and that all the properties described in the bill were among those prayed to be adjudicated by title of dominion to the mother, Manuela Gutman, and that said petition further prayed that their respective titles, when adjudicated, might be ordered to be duly inscribed in the registry of property for the proper district; that among the proofs offered in said court in support of said petition was the private settlement made between said three parties on January 16, 1901, which the present suit was brought to annul; that at the beginning of said proceeding and up to the 29th day of July, 1901, the attorney representing the present complainant was one José Maria Cuadra, but that said attorney withdrew on that date and was replaced after a delay of a month by one Juan F. Vias, which latter attorney requested, on behalf of his client, the definite approval of the proceedings instituted, solely with the additional declaration that the properties so acquired by said Manuela Gutman came as an inheritance from her son, and that those belonging to the sisters came from the inheritance of their deceased father, at the same time opposing the approval of said titles in the form prayed in said petition, because the real title of acquisition of the properties so to be adjudicated to said Manuela had not been set forth in the petition; that thereafter in the course of said proceeding the present complainant, through the same attorney, produced and submitted for

the consideration of said court such proofs touching her said contentions as she was advised, and thereafter on November 16, 1901, the said insular court entered a final decree in said cause to the effect that said private settlement was binding and valid as to all the parties thereto; that the opposition made by the present complainant had no legal foundation, and that the title of dominion to the various tracts of real estate (which is the same this court is now asked to cancel) should be confirmed in the manner prayed for in their petition without limitation or reserve; that from said final decree the present complainant took her appeal or writ of error to the Supreme Court of Porto Rico, and was there represented by her said attorney, Vias, which court, after considering the question presented, on June 4, 1902, pronounced and published its sentence and decree, affirming the decree and judgment of the Insular District Court.

Said pleas closed with the following averment:

> "And these defendants aver that by virtue of the proceedings aforesaid the very same claims and contentions made by the complainant in the present suit touching the same matters and property and to the same effect have been already considered and adjudged as between the said complainant and the privies in title of these defendants in the said Insular District Court of Humacao and the Supreme Court of Porto Rico, and that the same now are and remain *res judicata;* all of which will more fully appear from a certified copy of said sentence or decree of said Supreme Court, with a true translation thereof, herewith filed and made a part of this plea."

The certified copy of the Supreme Court's decree, which was attached as stated, will be found on pages 37-41 of the record.

The separate plea of the defendant Petronila Patricia Rios (Record, p. 22) was in substance as follows: That on or about December 10, 1901, the present complainant exhibited her complaint in the Insular District Court of

Humacao against this defendant and their mother, Manuela Gutman, praying for the annulment of the private contract made between said parties on January 16, 1901, which is the same private contract mentioned in the present suit, as well as for the cancellation of the title of dominion obtained from that court by virtue of said private agreement, which affected the same lands described in complainant's present bill, and the cancellation of the entry of the same in the Registry of Property; or, in the alternative, for the rescission of said private agreement and the annulment of the registration of said title of dominion; the present complainant therein claiming the same shares and proportions of property and the same rights and interest therein as in the present suit. That in said suit complainant obtained from the court an order for a preventive annotation of her claims in the registry which order described the same parcels of property described in her present bill, and the complainant asked in said suit for the same relief against this defendant in the same manner and for the same matters and to the same effect as she is claiming by her present bill. That defendant answered said complaint in the Insular court and said suit has proceeded to final decree in defendant's favor whereby said private settlement and all the proceedings and acts thereunder were decreed to be binding upon said complainant, as was alleged to appear from a copy of said described proceedings filed with said plea as a part thereof.

By an error of the clerk below in the preparation of the transcript, the document appearing as having been attached to said plea is not the true document, but is instead a copy of the decree of the district court in the dominion proceedings mentioned in the other pleas; but we have not thought it necessary to ask a certiorari to correct this mistake, as we believe that a plea of *res judicata* stands, like any other plea, upon the allegations set forth in it, and upon a setting of such plea for hearing as to its sufficiency all its allegations must be taken to be true and any exhibit filed therewith

which is inconsistent with such allegations must be disregarded.

Story's Equity Pleading, Secs. 697 *et seq.*
Emma Silver Min. Co. *vs.* Emma, etc., Co., 1 Fed. Rep., 39.
John D. Park & Sons Co. *vs.* Bruen, 133 Fed. Rep., 807.
Beals *vs.* Illinois, etc., Co., 133 U. S., 290.

On pages 46 to 52 inclusive of the record will be found the answers of the various defendants in support of their pleas. The character of these pleas must now be considered.

(*a*) The plea setting up the dominion title proceedings.

We have already stated the substance of these pleas. To them was attached a certified copy of the decree or "sentencia" of the Supreme Court of Porto Rico therein—a document which corresponds to the "opinions" of American appellate court, except that the "sentencia" was more formal and was required by law to review, in paragraphs, each beginning with the word "resultando," which might be freely translated "it appearing," all the pertinent facts found in the record sent up by the court below (Record, pp. 37-41).

From this exhibit it appears, in substantiation of the allegations of the plea, that this proceeding to obtain a dominion title to various tracts of real property was begun, as alleged, in the Insular Court at Humacao, on April 26th, 1901, on behalf of the mother and her two daughters jointly, Rafael Lopez Landron appearing as attorney for the mother, and José Maria Cuadra as attorney for the two daughters and the husband of the second, Petronila, and their joint petition declaring that they had no written title but had derived said properties from said José Maria Rios y Berrios and had acquired their respective rights in the various parcels which they desired inscribed in their several names by virtue of a settlement made between the mother and daughters, and praying for the adjudication of their respective titles as

alleged and the resulting inscription of said titles so adjudicated in the Registry of Property.

The pertinent points in said litigation as it proceeded, as recited in said "sentencia," are as follows:

1. That among the documentary evidence attached to the petition was the private agreement of settlement of January 16, 1901, "which was signed by the moving parties and their attorneys," "was introduced by the attorney for the sisters" and "the authenticity of which has not been assailed."

2. That José Maria Cuadra renounced the representation of Maria Rios on July 29, 1901, and Juan F. Vias assumed in his place said representation on August 31 following, and thereupon, in behalf of said Maria Rios, he asked the court to approve the *ex parte* proceedings thus instituted, only with the additional finding that the properties decreed to the mother had been acquired with the character of intestate inheritance from her son José Rios, while those decreed to the sisters had been acquired by them by inheritance from their father; but, in case the court should not grant this modification, he opposed on behalf of his client the granting of the original petition for title of dominion on the ground that said original petition did not correctly state the real title of acquisition of the properties to be adjudicated to the mother; and he offered evidence in support of his contentions, the character of which is stated, and it is specified that from such evidence it did not appear that there had been any partition and adjudication of the inheritance from said José Maria Rios y Berrios among his heirs.

3. That the trial court decided that the private agreement of settlement was a valid and binding contract because made by persons capable of contracting and upon a lawful subject matter, and moreover had the force of *res judicata* under the Spanish law; that the present complainant, Maria Rios, had accepted said settlement which was invoked as a basis for the titles of dominion; that she could not successfully oppose the prayer of said petition for the dominion titles because she was one of the parties instituting the same; that

the right to dominion titles as requested in the petition had been proven and was therefore granted; and that the same be accordingly inscribed in the Registry of Property without any limitation or reservation.

4. That from said judgment of the trial court said attorney for said Maria Rios took his appeal, assigning as errors four alleged violations of said Art. 395 of the mortgage law hereinbefore quoted, which were substantially as follows: (1) because said article only authorized dominion proceedings in cases where there was no written title to the property, which was not the case in that instance; (2) because the proof showed a perfect title in the petitioners; (3) because, after having admitted the opposition of Maria Rios and accepted the evidence tending to prove it, the court below had rendered its judgment without hearing all the parties and without specifically deciding therein these contentions of said Maria; and (4) because said Maria Rios had been denied the right of opposing the declaration of dominion title on account of being one of those who had instituted the proceeding.

It will be noticed from this authoritative review of the proceedings in the trial court, that Maria Rios very early in the proceedings dismissed the lawyer Cuadra, against whom she now makes the charges of fraud, and began to be represented by lawyer Vias, who had ample opportunity to set up the fact, if it were a fact, that Cuadra had acted without her knowledge or authority and she had, therefore, not really been a party to its commencement; that she also had opportunity in setting up her opposition to attack the private agreement itself as not signed by her voluntarily and with full knowledge of its contents, but the court finds to the contrary as a fact that she "accepted the settlement invoked as a title of dominion of the properties to which the *ex parte* proceeding refers;" but that the only points really raised were the validity of said agreement from a legal point of view and the proper method of procedure under said Art. 395 of the mortgage law.

Turning to page 40 of the printed record, we find what disposition was made by the Supreme Court of Porto Rico of the four errors assigned as above enumerated. The first and second, as to whether petitioners had a written title within the meaning of the law, were considered and squarely disposed of against the contention of appellant by holding that, where heirs had inherited properties in common from an ancestor and remained co-owners without a partition, "it cannot be said that either (of the heirs) have (has) a dominion upon determined properties of the same (the inheritance), as the *partition legally made only* grants that dominion in accordance with Article 1068 of the Civil Code." The determination of the third ground shows that what appellant referred to therein was the failure of the trial court to comply with Rule III (*i. e.*, paragraph 3 of the "formalities") of said Art. 395 (*supra*, p. 44) in not obtaining from the fiscal (the head of the Department of Public Prosecution, which is named in his stead in the very poor and, as regards this paragraph, incorrect translation of the War Department), and the other parties to the controversy their views *in writing* as to the claims and evidence presented. The court holds that such an error, even if committed, was an error of procedure only, not affecting substantive rights, hence not available to appellant who had pursued the method applicable to correct errors of substantial right only. Upon the fourth assignment of error the court held that it was needless to consider its merits because, even if well founded, it could not avail for a reversal since it could not affect the correctness of the final result which "would always be sustained by the essential and necessary foundation of the same, which is, the declaration made by the district court of Humacao of having been proven the dominion of the properties in question, without any limitation or reservation whatsoever, which declaration cannot be discussed in cassation because the appeal of cassation was not founded upon paragraph 7 of article 1690 of the law of civil procedure." After which the "sentencia" concluded (except the formal parts) with the following "considerando:"

"Considering that the order appealed from conforms to all the claims made by the parties and does not grant more than was prayed for, as thereby is granted the prayer made by Doña Manuela Gutman and her daughters Doña Maria and Doña Petronila in the petition instituting the *ex parte* proceeding of dominion, and the claim made by Doña Maria through her attorney Don Juan F. Vias is denied."

For the information of the court as to the exact provisions of the Spanish laws then in force in Porto Rico, which are referred to in the foregoing judgment of the Supreme Court of Porto Rico, it may be well to quote some articles of the Code of Civil Procedure under its title XXI, which treats of "Appeals for annulment of judgment" (War Department translation, 1899):

"Art. 1689. An appeal for annulment of judgment must be based upon one of the following causes:

"1. *Violation of law or legal doctrine* in the adjudging part of the decision. (Italics supplied.)

"2. *Breach* of some of the *essential forms* of the action. (Italics supplied.)

"3. The rendition of a judgment by amicable compounders outside of the period fixed in the compromise or upon a matter not submitted to their decision.

"Art. 1690. An appeal for annulment of judgment by reason of violation of law or of legal doctrine shall lie—

"1. When the decision contains a violation, erroneous interpretation, or wrongful application of law or of legal doctrine applicable to the case at issue.

"2. When the judgment is not pertinent to the allegations made by the litigants at the proper time.

"3. When the judgment grants more than is prayed for, or does not contain any declaration upon some of the allegations made in the action at the proper time.

"4. When the decision contains contradictory rulings.

"5. When the decision disallows a plea of *res judicata*, provided that this exception has been pleaded in the action.

"6. When, by reason of the matter at issue, there has been abuse, excess, or defect in the exercise of the jurisdiction, either taking cognizance of the matter which does not come within the jurisdiction of the court or judge, or in not taking cognizance thereof when it is his duty to do so.

"7. If in the consideration of evidence an error of law or of fact should have been committed, provided that the latter error is apparent from documents or authentic acts which show the evident error of the judge.

"Art. 1691. An appeal for annulment of judgment by reason of a violation of the essential forms of an action, for the purposes of subdivision 2 of article 1689, lies—

"1. For failure to summon, in the first or second instance, the persons who should have been cited for the action.

"2. For want of personal capacity in any of the parties or in the solicitor who may have represented them.

"3. For failure to take evidence in any instance when it should be taken according to law.

"4. On account of the failure to issue a citation for any proceeding for the taking of evidence or for final judgment in any instance.

"5. For refusal to order any proceeding for the taking of evidence, admissible according to law, and which failure may have prevented the presentation of any defense.

"6. By reason of a lack of competent jurisdiction, when this question has not been decided by the Supreme Court, and is not included in subdivision 6 of the foregoing article.

"7. By reason of the attendance to render judgment of one or more judges who had been challenged in due time, and for legal causes, which challenge had been allowed, or denied, when it should have been allowed.

8. On account of the judgment having been rendered by a less number of judges than that prescribed by law.

Art. 1692. An appeal for annulment of judgment

by reason of a violation of law or legal doctrine shall not lie—

"1. In actions of lesser import.

"2. In actions of unlawful detainer, when the annual rental of the estate does not exceed 5,000 pesetas.

"3. In executory, possessory, and other actions in which, after their conclusion, another action can be instituted for the same cause, excepting the cases mentioned in subdivisions 3 and 4 of article 1688.

"In all these actions appeals shall lie for annulment of judgment based upon a breach of any of the forms of the action mentioned in the foregoing article."

After a few more articles upon this subject generally, said code treats (Arts. 1698 to 1746) of the preparation, interposition, admission, hearing and decision of appeals for annulment of judgment for violation of law or legal doctrine; then (Arts. 1747 to 1765) of the interposition, admission of, and proceedings in, an appeal for breach of form; then (Arts. 1766 to 1771) of the procedure where a party wishes to appeal both for breach of form and for violation of law or legal doctrine; all which is followed by a chapter upon "Provisions common to all appeals for annulment of judgment." It seems, therefore, clear that the Supreme Court of Porto Rico held the cause appealable and passed upon the merits of the appeal so far as the same raised question of "violation of law or legal doctrine" and refused to pass upon those involving "breach of form" because counsel had so framed and conducted his appeal as to properly bring up the one class of errors and not the other.

From said plea, supported by the decision filed with it, we submit that the following facts appear:

1. That the private agreement of settlement was introduced into the dominion proceedings by the lawyer representing the two sisters, Maria and Petronila.

2. That after the employment in said proceeding of another lawyer by Maria, independent of her sister Petronila, additional evidence on behalf of the opposition of Maria was

produced, but the authenticity and validity of the agreement of settlement was never assailed or questioned.

3. That the second lawyer of said Maria, admitting the making and validity of said agreement of settlement, based his opposition to the petition of Petronila and her mother upon the ground that each and all of them already had a written title, and therefore the court was not authorized to enter the judgment they prayed for.

4. That the trial court found as a fact that the agreement of settlement was binding, and as matter of law that it was a sufficient foundation for the petition they had filed.

5. That the trial court found as a fact that said Maria had accepted as valid said agreement of settlement.

6. That the trial court found as a fact that the right of petitioners to a dominion title as prayed for had been properly and sufficiently proven by the evidence.

7. That the trial court found as matter of law that it had jurisdiction to decide the foregoing facts and to base a judgment thereon granting a dominion title and ordering it recorded as prayed in the petition.

8. That the Supreme Court affirmed the judgment of the trial court.

Comparing, then, the matters in controversy between said complainant and her mother and sister in that proceeding to obtain the dominion title, and the basis of complainant's present bill for relief against the same sister and other privies in title to her said mother in the suit now before the court, it seems to us too plain for argument that the two main grounds of the present bill—grounds without which it could not have been conceived—to wit: the invalidity of the agreement of settlement and the right of the District Court of Humacao to grant a dominion title upon the allegations of the petition therein filed, were the very grounds presented to and passed upon by that court and by the Supreme Court upon appeal. If so, it seems to us that the plea of *res judicata* filed by these defendants must be good in any court in any land where permanent forms of legal procedure are recognized.

In the court below the counsel for complainant were apparently successful in their effort to avoid the force of these circumstances by insisting upon two untenable propositions, which were: first, that the proceeding to obtain a dominion title being in its nature *ex parte*, or what the Spanish law calls "proceedings of voluntary jurisdiction," the judgment rendered in them was not final and conclusive to the extent of becoming *res judicata*, and second, that in this proceeding to obtain a dominion title the trial court was confined by the law within the narrow limits of granting or denying the petition, that is, decreeing or refusing to decree the petitioners the title sought, hence that the court was without jurisdiction to determine the other questions which they did determine, and the Federal court in which the present bill was brought had the same right to consider and determine for itself the same questions as though they had never been in fact determined by the Insular court.

Let us examine these propositions in their order:

(A) What was the nature of the dominion proceeding, and its effect?

This is to be determined by the provisions of the Code governing the same, and the decisions of the Supreme Court of Spain construing such provisions.

The Code of Civil Procedure, then in force in Porto Rico, was the same from which we have already quoted, and which remained in force until the adoption of the new Code in 1904. The third division of this Code—called the Third Book—is devoted to "Voluntary Jurisdiction," and the first sub-head is entitled "General Provisions," which begins with Art. 1810, and, together with such succeeding articles as are pertinent, reads, in the War Department translation, as follows:

> "Art. 1810. All proceedings in which the intervention of the judge is requested or is necessary, *without there being actual litigation*, or in which *no question* is raised between *known* and *determined parties*, shall be considered an act of voluntary jurisdiction. (Italics supplied.)

"Art. 1813. In cases in which the hearing is granted the person who instituted the proceedings may also be heard in the manner prescribed in the foregoing article.

"Art. 1814. The public prosecutor (promotor fiscal) shall also be heard when the petition instituted affects public interests and when it relates to a person or thing whose defence or protection appertains to the public authorities.

"The public prosecutor shall prepare his report in writing, for which purpose the record of proceedings shall be delivered to him.

"Art. 1815. All documents which may be presented and evidence offered shall be admitted without the necessity of a request or any other formality.

"Art. 1816. *If opposition to the request should be made* by any person having an interest in the matter, the *proceedings shall be of contentious jurisdiction*, without altering the situation of the parties at the time of the institution of the proceedings, nor the subject-matter thereof, and it shall be subject to the procedure prescribed for the proper action, according to the amount involved. (Italics supplied.)

"Art. 1817. The judge may change or modify the orders he may issue without following the rules and formalities prescribed for acts of contentious jurisdiction.

"The rulings which have the force of final decisions and against which no remedies shall have been interposed are not included in this provision."

We have never contended that so long as a proceeding remains strictly one of voluntary jurisdiction under these provisions—that is, "without there being actual litigation, or in which no question is raised between known and determined parties"—the result of it becomes *res judicata*, but we have contended, and do contend, that the moment the proceeding changes and assumes the aspect described in Art. 1816 above quoted its voluntary character disappears; it becomes in its nature and consequences contentious, and its result becomes *res judicata* to the same extent as if the pro-

ceeding had never had a non-contentious character, and that that is what happened in this proceeding to obtain the dominion title.

Counsel for complainant cited at the argument in the court below a number of decisions of the Supreme Court of Spain, supporting the general proposition as stated, but in each of these cases it clearly appeared, and in most of them it was expressly stated, that at no time in the progress of the proceeding was any opposition made to the granting of the petition; in other words, it continued *ex parte* to the end. One of those very cases then cited on behalf of complainant, a decision rendered on January 11, 1887, and reported in "Jurisprudencia Civil Española," vol. 61, p. 61, clearly states the *reason* underlying this rule as follows:

> "No puede deducirse logicalmente de aqui que tales autos tengan fuerza permanente de cosa juzgada toda vez que recaen en asuntos sobre los cuales no ha mediado discusión forense en juicio verdadero."

which may be translated as meaning:

> "It cannot be logically deduced from the foregoing that edicts of this sort permanently have the force of *res judicata* for the reason that they are pronounced in proceedings in which no forensic discussion has taken place during a real trial."

Therefore wherever opposition develops which leads to a forensic discussion, taken part in by opposite interests, and resulting in a real trial, decisions based upon the absence of such elements are simply inapplicable and are in no sense inconsistent with the cases which we are about to cite, showing that the moment opposition is entered by any of the parties the voluntary proceedings become contentious. As there are several of these cases involving different branches of the voluntary jurisdiction, we will cite them in chronological order:

(1) Decision of February 20, 1872: Juris. Civ., vol. 25, p. 208:

This was a petition filed at Puerto Principe, Island of Cuba, in the year 1867 by one Josefa Antonia Olazabal, asking for a judicial declaration of intestate heirship of Doña Trinidad Lopez Hidalgo, who had then recently died. Five days after the filing of this proceeding the husband of the deceased, Juan Freire, intervened in the matter, alleging that his wife had left a will disposing of her property, and asking the suspension of the proceedings upon the petition of said Doña Josefa and the probate of the will, to which asking Doña Josefa in turn naturally made opposition. The suit then proceeded to final judgment in favor of the latter, the court finding that the alleged will was not legally executed, and from this judgment Freire appealed. The language of the Supreme Court of Spain upon this particular point is as follows:

> "Considerando que este expediente de jurisdicción voluntaria desde luego que hubo oposición por parte de Doña Josefa Antonia Olazabal se hizo contencioso y quedó subjeto á los tramites establecidos para el juicio que correspondia, conforme á lo dispuesto en la regla setima del art. 1208 de la ley de Enjuicimiento civil," etc.

which may be translated as meaning:

> "We decide that this proceeding of voluntary jurisdiction, as soon as opposition was made on the part of Doña Josefa Antonia Olazabal, became contentious and remained subject to the procedure established for suits of a corresponding character, according to the provisions of rule 7 of art. 1208 of the code of civil procedure," etc.

(2) Decision of April 15, 1872; Juris. Civ., vol. 25, p. 429:

This was a proceeding brought under the voluntary jurisdiction to compel the liquidator of a mercantile firm to acknowledge the maturity of a promissory note which had by mistake been given without any date. The Spanish code

provides such a proceeding upon certain classes of written instruments and, in case the party cited in does acknowledge the validity of the instrument, it further provides for judgment and execution upon said instrument without the necessity of any contentious suit. The liquidator of the firm in this case, upon being cited, not only acknowledged the maturity of the note, but also tendered payment of the principal and interest; but being in that proceeding adjudged, notwithstanding his tender, liable for the costs, he refused to pay them and appealed from that part of the judgment. The Supreme Court says:

> "Considerando que sustanciada la apelacion interpuesto por el socio capitalista la regla 13 del art. citado 1208, y conforme con los tramites marcados en el 840 y siguentes de la misma ley de Enjuicimiento civil, se ha seguido un verdadero juicio," etc.

which may be translated as meaning:

> "We decide that, the appeal taken by the partner who had contributed the capital (who was the liquidator) having pursued the requirements of rule 13 of said article 1208 and being in conformity with the procedure indicated in article 840 *et seq.* of the same law of Civil Procedure, a real trial has taken place," etc.

(3) Decision of February 6, 1885; Juris. Civ., vol. 57, p. 161:

This was a petition filed by Pedro Izquierdo and others to obtain judicial authority to sell certain real estate, the property of an infant. One Francisco Almazan, who had a claim against the property, intervened and opposed the petition. His claim was thereupon paid off, but he was still unwilling to withdraw his opposition and, upon the petition being granted, appealed. The discussion in the opinion is too long to quote, but the Supreme Court holds that the proceeding in the beginning was within the voluntary jurisdiction, that the opposition of Almazan changed its character

to a contentious suit, and that the payment of Almazan's claim ending his interest and right to make opposition, the action thereafter should have resumed its original character within the voluntary jurisdiction, and Almazan had, therefore, no right of appeal from the order finally made.

(4) Decision of December 14, 1887; Juris. Civ., vol. 62, p. 685:

This was a petition under the voluntary jurisdiction by a husband, from whom his wife had separated, praying the custody of their child and a restoration of marital rights. The wife came in and opposed the granting of the petition. The Supreme Court held that the proceeding thereby lost its character as one under the voluntary jurisdiction and became contentious, using the following language:

> "Considerando que, tratandose, como se trata, en los autos que han dado margen al presente recurso de casación de un auto de jurisdicción voluntaria, de que no hace especial mención la ley de Enjuicimiento civil, le es aplicable la regla septima del art. 1208 de aquella, vigente á la sazón en Cuba, y que, por lo tanto, debió hacerse contensioso el expediente desde el momento que formuló oposición una parte que en él tiene interes y personalidad, puesto que, con arreglo con art. 1356 de la citada ley, la mujer casada no necesita habilitación para litigar con su marido."

which may be translated as meaning:

> "We decide that, treating as we do in the suit which has given rise to the present appeal of a proceeding under the voluntary jurisdiction which is not specially mentioned in the Code of Civil Procedure, there should be applied to it rule 7 of art. 1208 of that Code, in force at that period in Cuba; and that, therefore, the proceeding ought to be considered contentious from the moment that one of the parties who had an interest and legal standing in it formulated his opposition, since, according to art. 1356 of said law, a married woman needs no special permission in order to litigate with her husband."

Other decisions might be quoted, but we feel sure a careful perusal of the foregoing will convince the court that, whenever a proceeding begun under the voluntary jurisdiction, that is, *ex parte*, develops into a contest with two sides to it, from that moment such proceeding becomes contentious, and its result when finally determined has the effect of *res judicata* to the same extent as in any other case.

(B) Did the action of the trial court in the dominion proceeding exceed its jurisdiction, and, if so, was the complainant below in any position to raise that question?

First, did the court exceed its jurisdiction? We think not? It will not be denied that the court had jurisdiction generally to entertain these *ex parte* petitions and declare or refuse a dominion title, and, in case the decree granted the petition, to order such title duly inscribed in the Registry. That was the clear object of the law hereinbefore quoted. One section of that law just as clearly provided that, in the event of opposition being made by any interested party, the character of the proceeding should be changed to a contentious proceeding, that is, an ordinary suit between ascertained parties on each side. Exactly that happened in the case under consideration. Nothing is specified in this special law as to what shall be done after that, because the course of the suit was to be thereafter governed by the general law regulating ordinary actions. All that the mother and sister Petronila did had been done before the opposition was entered; they merely presented their petition with the proof considered necessary to substantiate it and authorize its allowance. The complainant Maria was the only one who changed the questions before the court, if they were changed. But we submit that they were not changed. The opposition of Maria was not to the entering of *any* decree granting the prayer of the petition, but it was solely a contention for a decree of the same kind but differing in its terms—a contention founded upon the insufficiency of the *evidence*

to warrant a full dominion title in the mother. Therefore, in determining whether the terms of the decree should be as desired by the proponents or the opponent, the court was obliged to pass upon the effect of the evidence, and that necessarily included the questions whether the private agreement of settlement was a valid and binding one, whether in legal effect it was sufficient foundation for the title prayed for, and whether opponent's claim was correct that a written title by descent already existed which should cause the court to deny the declaration asked for. These were the only substantive matters decided, other conclusions were simply incidental and subsidiary. We believe that each and every finding was within the jurisdiction of the court and regular.

But, second, in what position is the complainant to raise these questions? After she had started her opposition under the advice of Juan F. Vias, the lawyer of her exclusive choice, she joined in the request that some kind of a decree be entered; she adopted the evidence already offered to the court, which included the private agreement which she is now alleging was fraudulent; she offered additional evidence in an attempt to induce the court to exercise its jurisdiction in her favor; and, after all her contentions had been overruled, she took her appeal to the higher court, alleging only erroneous application of the Art. 395, which we have quoted. If the court had jurisdiction to enter a decree declaring the dominion of these properties to be in the mother, "with the reservation that they had been acquired with the character of intestate inheritance from her son"—which was what complainant asked—what reason can be assigned why that court could not enter the same decree without such "reservation"—which was what it did?

The fallacy of this particular argument on behalf of complainant can best be shown in a word by quoting a paragraph from a well-known decision of this court, speaking through Mr. Justice Brewer:

> "But back of any criticism of the reasoning of the supreme court (of the State) in its two opinions lies

the *fact* of its decision. And here these things appear: The City of Hammond sought to bring within its limits, among other territory, the lands of plaintiff. After action by the city council, the city instituted proceedings before the county commissioners, which proceedings were subsequently taken by appeal, as prescribed by statute, to the circuit court, a court of general jurisdiction, and in that court a decree was entered annexing plaintiff's land to the City of Hammond. Were or were not these proceedings valid, and was or was not such decree a binding adjudication which neither the city nor the plaintiff could elsewhere dispute? That question certainly is one of a judicial nature. Now, it is no less a judicial function to consider whether those proceedings and that decree were valid and effective, and determine that they were and operated to annex plaintiff's territory to the city, than to enter upon a like consideration, and determine that they were invalid and ineffective to make such annexation. The decision of the Supreme Court of Indiana was in favor of the validity, that of the Court of Appeals (from which it was brought to the United States Supreme Court) against their validity; and, if it is judicial to hear and determine one way, it is likewise judicial to hear and determine the other. If action by the State tribunals stopped with the decree of the trial court, it might be said that the plaintiff did not voluntarily seek that forum. She was brought in by appropriate process, and compelled to there litigate the question. But after an adverse decree she *insisted* that it was not only erroneous but void, and voluntarily commenced an action in the Supreme Court of the State to have that claim established. She invoked the jurisdiction of that court. She summoned the City of Hammond into that forum, and there challenged the decree of the circuit court,—challenged it for error, and also for lack of jurisdiction. The question both of error and of jurisdiction were certainly judicial in their nature, and questions within the undoubted cognizance of the supreme court. She voluntarily sought its judgment. Can she, after its decision, be heard in any other tribunal to collaterally deny the validity thereof? Does not the principle of *res judicata* apply in all its

force? Having litigated the question in one competent tribunal and been defeated, can she litigate the same question in another tribunal acting independently and having no appellate jurisdiction? * * *

"The principles controlling the doctrine of *res judicata* have been so often announced, and are so universally recognized, that the citation of authorities is scarcely necessary. Though the form and causes of action may be different, a decision by a court of competent jurisdiction in respect to any essential fact or question in the one action is conclusive between the parties in all subsequent actions."

Forsyth vs. City of Hammond (166 U. S., 506).

We therefore conclude that we have fairly maintained both our propositions; that the procedure of the Insular court in the dominion proceeding was regular, but, that, if it was not, the complainant was primarily responsible for the irregularity, and, by her submission to the jurisdiction of that court, has waived any question which could be collaterally raised in this suit.

(*b*) The plea describing the suit brought by complainant against her mother and sister in the Humanoo court.

We have already given a résumé on this plea on pages 49-50 of this brief, and the plea itself is found on pages 22 and 23 of the printed record. It seems needless to indulge in further discussion of its allegations, as they clearly show that the contents of the complaints in the suit set up in the plea followed as closely as one suit could another the allegations of the bill of complaint in the present suit both as to subject matter and character of relief asked. As to parties, the complainant was the same, her sister Petronila was defendant in both suits and the other defendants in the present bill are all privies in title to the mother who was the remaining defendant in the Humanoo suit.

It is further to be noted that no allegation of fraud attempted to be made in the amended bill of complaint in the

present suit affects, or has any reference to, the suit set up in this plea. There is no pretense that complainant did not authorize the commencement of that suit, because she was represented in it throughout by her present counsel, Juan F. Vias Ochoteca. We therefore insist that complainant is a second time estopped by the adjudication in this plea set up from maintaining her present bill.

(c) In the consideration of the question of *res judicata* a further point may be made as to whether the sufficiency of these pleas, as a defense, is to be determined by the application of the principles of Spanish or American law in that regard, although we believe the prior adjudication set up in either plea is well within the limits of the doctrine of *res judicata* as established in either system. Our contention, however, is that this question must be determined in accordance with American principles and precedents for the reason that the complainant has seen fit to seek relief in a United States court whose pleadings and proceedings are governed by those precedents, and for the further reason that the applicability of *res judicata* is a question of general, and not local, law.

We believe this question was settled by the authority of this court many years ago on a writ of error to a judgment in an action in ejectment which had been tried in a Federal Court in Ohio. The contention had been made by counsel that this court was not bound by the decisions of the State courts upon the construction of wills, and starting therefrom this court said:

> "Without expressing any opinion on this question, it is a sufficient answer to say, even admitting the position contended for, it could not help the plaintiff, as it has no application to the present case. This court acknowledges the rule, and has uniformly applied it, of the conclusiveness of a judgment of a court of concurrent jurisdiction between the same parties or their privies, upon the same question."
>
> Parrish *vs.* Ferris, 2 Black, 606, 609.

And that it has been very recently reaffirmed:

> "And although it be conceded for the sake of argument that the doctrine of *res judicata*, as announced in rulings of the supreme court of South Carolina, lend support to the contention made, our duty is to give to the decree of the circuit court of the United States in the *Pegues Case* the force and effect to which it is entitled under the principle of *res judicata* as settled by this court, especially in view of the fact that the controversy in the *Pegues Case* involved rights protected by the Constitution of the United States."
>
> Gunter *vs.* Atlantic, etc., R. Co., 200 U. S., 273, 290.

What, then is that rule? It has never been better stated than in the leading case of Cromwell *vs.* Sac County, 94 U. S., 351, but is repeated in very apt language in the latest utterance upon this subject by this court, speaking by Mr. Justice McKenna:

> "The general rule of the extent of the bar is not only what was pleaded or litigated, but what could have been pleaded or litigated. There is a difference between the effect of a judgment as a bar against the prosecution of a second action for the same claim or demand, and its effect as an estoppel in another action between the same parties upon another claim or demand (citations) and a distinction between personal actions and real actions is useful to observe. Herman, Estoppel, § 92. It is there said: 'Although there may be several different claims for the same thing, there can be only one right of property in it; therefore, when a cause of action has resulted in favor of the defendant, when the plaintiff claims the property of a certain thing there can be no other action maintained against the same party for the same property, for that would be to renew the question already decided; for the single question in litigation was whether the property belonged to the plaintiff or not; and it is of no importance that the plaintiff failed to set up all his rights upon which his cause of action could have been maintained; it is sufficient that it might have been litigated.' * * *

"In other words, plaintiff in error, as successor of the Spokane & Palouse Railway Company, again asserts title to the very property that was the subject of the other suit, the source of title, only, being different. If this may be done, how often may it be repeated? If defeated upon the new title, may plaintiff in error assert still another one, either in its predecessor or in itself, and repeat as often as it may vary its claim? The principle of *res judicata* and the cases enforcing and illustrating that principle declare otherwise."

Northern P. R. Co. *vs.* Slaght, 205 U. S., 122, 131.

In the foregoing case is also included a pertinent quotation from another recent case, as follows:

"The best that can be said, apart from the act just quoted, to distinguish the two suits, is that now the United States puts forward a new ground for its prayer. Formerly it sought to avoid the patent by way of forfeiture. Now it seeks the same conclusion by a different means; that is to say, by evidence that the lands originally were excepted from the grant. But in this, as in the former suit, it seeks to establish its own title to the fee."

United States *vs.* California, etc., Co., 192 U. S., 355.

(*d*) Both systems of law recognize the principle of *res judicata* as being applicable by way of estoppel from disputing any decision so far as its terms may have been consented to either expressly or tacitly by failure to avail oneself of rights of appeal, and also where parties have voluntarily submitted issues for judicial determination.

Old Code of Civil Proced. of Porto Rico, Art. 407.

Old Civil Code of Porto Rico, Art. 1816.

Leon y Compania *vs.* Bank of Igualada, 67 Juris. Civ., 840.

Lawrence *vs.* Wilson, 143 U. S., 215.

Benker *vs.* Meyer, 154 Fed. Rep., 293.

Felicia Amoros *vs.* Blanca de la Portilla, 78 Juris. Civ., 379.

The foregoing article from the old Code of Civil Procedure, which was in force until 1904, referring to appellate procedure, is as follows (War Dept. Trans.):

> "Art. 407. After the periods fixed for the preparation, interposition or perfection of a remedy, without seeking the benefit thereof, the subject-matter of the judicial decision shall be considered *res judicata* without the necessity of an express declaration therefor."

The provisions of Art. 1816 of the old Civil Code (Sec. 1717 of the New) are as follows:

> "Art. 1816. A compromise has, with regard to the parties, the same authority as *res adjudicata;* but summary proceedings shall not be proper except when the fulfillment of a judicial compromise is in question."

One paragraph of the decision of the first cited case from the Supreme Court of Spain reads as follows:

> "Considerando, respeto del segundo motivo, que no es aplicable al caso de autos, el num. 5° del art. 1692 de la ley procesal; porque, aparte de otras razones, el mismo recurrente tiene reconocida la competencia judicial, que ahora niega, para conocer y decidir sobre los puntos á que se refiere, y que forman la materia de este juicio en el mero hecho de haberlos sometido al debate forense por medio de su demanda, sin que por otra parte legitimen tampoco la procedencia del motivo las especies de que la continencia del pleito es varia y divisible, y que el fallo de primera instancia se hizo ejecutorio pro no haberse alzado de él los demandados Aguilera y Jover en la parte que les afectaba," etc. (67 Juris. Civ., p. 840 *et seq.*).

which may be translated as meaning:

> "We decide, as regards the second ground, that the sixth paragraph of article 1692 of the law of procedure is not applicable to the case at bar; because,

aside from other reasons, this appellant has recognized the competency of the tribunals—the very thing which he now denies—to take cognizance of and decide upon the points referred to and which form the subject-matter of this proceeding, by the mere fact of having submitted them to discussion in that forum by means of his complaint, without on the other hand making valid the ground of appeal by the specification that the unity of the suit is variable and divisible, and that the judgment in the lower court has been made final and subject to be executed because the defendants Aguilera and Jover have not taken an appeal from that part of it which affected them," etc.

The above-cited case of Amoros *vs.* Blanca de la Portilla was one where the appellant, who was also plaintiff below, had borrowed (through her *tutora* while an infant) a large sum of money, giving as security a mortgage upon real estate. An executive suit—which is one under the voluntary jurisdiction—was brought and opposition made by the legal representatives of appellant, but that opposition was afterward allowed to lapse and an appeal instituted by another interested party was abandoned, so that the real estate was sold under the execution in 1882. In 1884 the appellant brought an ordinary or contentious suit against the mortgagee, who had bought in the property, praying for the annulment of the execution and sale. One of the defenses made was that, as no appeal had been prosecuted from the judgment in the executive suit, this appellant was estopped thereby. Following is the language of the decision:

"Considerando que las providencias y resoluciones judiciales consentidas, por no haberse deducido contra ellas los recursos adecuados adquieren la autoridad de la cosa juzgada; y siendo este el fundamento de la Sala sentenciadora para desestimar la demanda en cuanto se refiere a la nulidad por ella imputada á determinadas actuaciones del juicio ejecutivo seguido á instancia de los herederos de la Portilla, es visto

que no ha incurrido en el error de hecho que se le atribuye en al septimo moti * * * del recurso."

Which may be translated as meaning:

"We decide that orders and judicial resolutions made by consent acquire the character of *res judicata* on account of failure to take an appeal allowed by law; and this being the basis of the decision by the court below for denying the complaint in so far as it refers to the nullity by it imputed to certain proceedings in the executive action brought at the instance of the heirs of Portilla, it is seen that the court did not commit the error of fact which is alleged in the seventh ground of the appeal."

(*e*) As in the year 1902, when the appeal of the complainant below in her former suit in the insular court was decided by the Supreme Court of Porto, the Civil Government Act, hereinbefore mentioned, was in force, and by its section 35 complainant had a further right of appeal from the Supreme Court of Porto Rico to this court, of which she failed to avail herself, we further submit that the judgment of the insular courts became also *res judicata* under the provisions of the above article 407 of the Code of Civil Procedure, derived from Spain, because of her failure to avail herself of her right to such further appeal.

IV.

Deprivation of Chosen Counsel.

The fourth error assigned is based upon the requirement of the court below that defendants below elect whether they would use one Rafael Lopez Landron as one of their counsel or as a witness; and, upon their forced election to use him as a witness, in further requiring him to be excluded from the court room with the other witnesses.

The above named gentleman was not only a member of the bar of the court in which the case was being tried, but

was also one of the counsel chosen by the two defendants, Victor Burset and Santiago R. Palmer, to defend their interests in this suit, and had appeared of record as such counsel (Record, pp. 34 and 49). On page 74 of the Record it appears that, as soon as the taking of testimony was begun, the same being in the presence of the Judge and without the intervention of a Master, counsel for the complainant made a motion that "Attorney Rafael Lopez Landron be put under the rule and excluded from the room together with the other witnesses during the progress of the trial," upon which the ruling of the court was that "Attorney Landron must withdraw either as counsel or as a witness." The defendants excepted to that ruling, but, being thereby forced to their election, elected to use him as a witness, which forced his retirement as counsel. A little later, during the cross-examination of complainant as a witness, Mr. Landron appears to have again entered the court room; whereupon counsel for complainant renewed their insistence that he was to retire if he was to become a witness, which he was required to do (Record, p. 101).

There is no lack of adjudged cases to the effect that there is no necessary violation of law or of duty in an attorney acting as a witness for his client. It is true that in most of these cases the election was to retain the professional services of the lawyer and refrain from using him as a witness; and uniformly, in the absence of special conditions, his exclusion as a witness has been held to be erroneous and has caused a reversal of the case.

Weeks on Attorneys at Law, sec. 124 and cases cited.
Beall *vs.* Finley, 1 New Mex., 507.
McLaren *vs.* Gillespie, 19 Utah, 137.
Baldwin *vs.* Fence Co., 19 C. C. A., 575.
French *vs.* Hall, 119 U. S., 152.

In the last cited case this court said:

> "There is nothing in the policy of the law, as there is no positive enactment, which hinders the attorney

> of a party prosecuting or defending in a civil action from testifying at the call of his client. In some cases it may be unseemly, especially if counsel is in a position to comment on his own testimony, and the practice, therefore, may very properly be discouraged; but there are cases, also, in which it may be quite important, if not necessary, that the testimony should be admitted to prevent injustice or to redress wrong."

In the present instance Mr. Landron, in the judgment of counsel associated with him in the case, was an indispenable witness; hence his clients were deprived of his counsel and advice. It is true that he was not sole counsel for those defendants whom he represented, but we do not see that that changes the principle which gives to litigants the right to be represented by the counsel whom they have chosen and paid to conduct their defense.

We therefore submit that the error committed by the court was one which was materially prejudicial to the rights of defendants, and comes within the principles laid down in the above cases where the election was the opposite of that here made.

V.

Denying Preliminary Motions.

The next two assignments of error (the 5th and 6th) may be considered together.

The former alleges error in the ruling of the court denying defendants' motion to dismiss complainant's bill at the conclusion of her own testimony (Record, p. 121). The latter alleges error in the denial of defendants' motion to require complainant to produce all her testimony on the subject of the alleged fraud, and then permit defendants to controvert that evidence, so that the court might decide upon the existence or non-existence of fraud before receiving evidence pertinent to the other allegations of the bill (Record, p. 142).

Counsel for appellants do not contend that the procedure here contended for would apply to all classes of cases, nor perhaps to all cases that are based upon allegations of actual fraud. But here was a bill which admitted the making of an agreement which the circumstances showed to have been a family settlement ending a long existing controversy, which had arisen from the non-settlement of an inheritance left more than a quarter century before. The complainant admitted the signing of this family settlement but sought to avoid its effect by claiming that her signature had been obtained by fraud and deceit. She was introduced as the first witness in her own behalf, stated that she was present when the deceit was practiced, that it was practiced upon her directly and not through any agent or third party, and that the whole occurrence covered but a single interview. Under such circumstances, we submit, if an examination of the testimony of complainant herself discloses no such fraud or deceit practiced upon her as equity recognizes as a ground of relief, then her case should be dismissed. The stream cannot rise higher than its source; a complainant cannot call other witnesses to contradict what she herself has admitted and sworn of her own knowledge are the facts and circumstances upon which she bases her right to relief. Also where the gist of a complaint is actual fraud, complainant cannot, before making out a *prima facie* case of the fraud, proceed to prove other allegations of her bill whose materiality is solely resultant from the alleged fraud. If these principles be correct it is necessary, in considering these errors, to examine the testimony of complainant and see if it disclosed sufficient evidence of fraud or deceit to make a *prima facie* case for relief, and next the proper procedure and order of proof in cases alleging actual fraud.

(1) In order to determine what kind of evidence would be necessary to make a *prima facie* case, it is also necessary to bear in mind the rules applying to the granting of relief as against a family settlement, which the agreement here attacked is shown to be. Nothing is clearer both on principle

and authority than that family settlements are favored in the law, even to a greater degree than other solemn documents between parties having no intimate relations; and they will only be set aside upon evidence that is clear, unequivocal and convincing:

Frye *et al. vs.* Porter *et al.*, 15 How., 42.
Chandler *vs.* Pomeroy, 143 U. S., 318, 336.
Babbitt *vs.* Dotten, 14 Fed. Rep., 19.
Burnes *vs.* Burnes, 132 Fed. Rep., 485, 493.
Fowler *vs.* Fowler, 135 Fed. Rep., 405, 408.
Anderson *vs.* Conolly, 145 Fed. Rep., 43.

In the above case of Chandler *vs.* Pomeroy this court expressed the rule tersely as follows (on page 336):

> "In order to justify the court in refusing to enforce a family settlement of this kind upon the ground that it was obtained by an active or covert misrepresentation, or that it failed to express the real intent of the parties, the testimony should establish the fact clearly and satisfactorily."

And in the case of Burnes *vs.* Burnes the language was even stronger:

> "The jarring and wranglings of the family were thereby concealed from the public and, as was supposed, forever put out of sight. Whether the settlement was what a court of equity would have decreed is not the question. It was an agreement of settlement and was supported by a consideration. It was a family settlement, and such settlements are seldom corrected or canceled. In 2 Pom. Eq., Sec. 850, it is said:
>
> "Compromises, where doubts with respect to individual rights, especially among members of the same family, have arisen, and where all the parties, instead of ascertaining and enforcing their mutual rights and obligations, which are yet undetermined and uncertain, intentionally put an end to all controversy by a voluntary transaction in the way of a compromise, are highly favored by courts of equity. They will not be disturbed for any ordinary mistake either of

law or of fact, in the absence of conduct otherwise inequitable, since their very object is to settle all such possible errors without a judicial controversy.'

"For reforming or canceling a contract, courts require stronger proof in cases of family settlements than in any other, and will even hunt for reasons to sustain such contracts, to the end that family secrets, disputes and wranglings may be kept from the gaze of a curious and gossiping public. The law is stated by Justice Story, in his work on equity (section 132):

"There are cases of family compromises, where upon principles of policy, for the honor or peace of families, the doctrine sustaining compromises has been carried further; and it has been truly remarked that in such family arrangements the court of chancery has administered an equity which is not applied to agreements generally. Such compromises, fairly and reasonably made to save the honor of a family, as in case of suspected illegitimacy, to prevent family disputes and family forfeitures, are upheld with a strong hand, and are binding when in cases between mere strangers the like agreements would not be enforced.' "

Bearing these principles in mind, we ask the court to review the testimony of complainant to see whether her own story made out a case entitling her to relief. The salient points are as follows:

Lawyer Cuadra was employed by her "for the purpose that the testamentary proceedings should be carried out in order that the estate should be divided between my sister, my mother and myself and the share corresponding to my mother in usufruct" (page 83). It was only upon repetition of the question at the instance of her counsel, showing that they were dissatisfied with her answer, that she corrected herself by leaving out the name of her mother.

She knew that Lawyer Cuadra also represented her sister (page 86).

The contract was brought to her in the evening and she had received no previous notice of their coming. Lawyer Cuadra represented her and her sister and Landron represented her mother. The latter carried the contract. She did

not read it, but Landron and Cuadra said it was the basis of a settlement and did not prejudice her interest in the least (page 87).

She asked Landron if her mother was satisfied that the properties should be given in usufruct and he replied that she was. She did not read the document because her sister had already signed and she was not afraid. She *did not ask any advice* from her attorney, Cuadra, and after what was said by Landron *nothing was said* by anyone else, but Cuadra "encouraged her to sign it" and "affirmed what Mr. Landron had said." Then the question was asked "At the request of whom or at whose advice did you sign that document?" and her reply was *"Of nobody.* The lawyers themselves inspired confidence. I had confidence in the attorneys and they encouraged me to sign it" (page 88).

She obtained from what was told her "more or less an idea" of what part of the property she was to get, that it was to be divided into three parts, but the parts were not equal, and that the part adjudicated to her mother was to be in usufruct. No copy of the document was given her that night, but lawyer Cuadra gave her one two or three days later (page 89). After she received the copy she told Cuadra that they had told her the mother's part was to be in usufruct and he replied to her that she was absolutely mistaken. She then became angry at him and he never called upon her again, and she never afterward employed him as her attorney. She did not know of his joining with her mother's attorney in the petition asking for a declaration of dominion title, as she was sick in San Juan at the time and when she found it out she went to Humacao and placed her interests in the hands of Attorney Vias. She never consented to the dominion proceeding (page 90).

That part of the cross-examination referring to the execution of the agreement of settlement brought out the following:

When the gentlemen came to her house for her signature to the document it was placed on a table in the parlor. She

approached the table, sent for pen and ink and signed without reading. She was not threatened and no force was used. She understood her mother had only a right to the usufruct to the property because her husband had several times told her so and because the property had belonged to her father. She did not know whether her mother brought any property to the marriage, nor whether her mother had rights in the property in question as conjugal property or by virtue of her administration thereof for 25 years. No one prevented her from reading the document at the time she signed it. She then saw the other signatures to it: her mother's, her sister's and the lawyer's. She objected to the terms of the document when it was shown to her two or three days afterward, but communicated her objection to neither her mother nor her sister, only to her attorney Cuadra (pages 93 and 94).

She did not speak to her sister at that time about her objection to the agreement, although they were then on friendly terms and lived in the same town. She never spoke to Cuadra about making a settlement and did not know how he could arrive at that settlement without her instructions (pages 100 and 101).

She signed the instrument without having given any instructions to her attorney to make it because of her confidence in him and because her sister had signed and she knew her sister would not sign against her own interest. She did not know that she obligated herself to the terms of the document by signing it, because she was not acquainted with matters of law (page 102).

At the signing of the document the lawyers told her her mother claimed only the usufruct. Up to that time she never knew what her mother claimed. She and her sister could never come to an understanding with their mother. The latter would never consent to a division of the estate left by the father. As she had never read her father's will she did not know what portion of the estate belonged to her. Her husband had never explained to her any details of the

matter. After Cuadra delivered to her a copy of the agreement and she expressed her dissent from its terms she consulted no other lawyer until after she learned of the dominion proceeding which was six months, more or less (pages 103 and 104).

At the signing of the document her sister's husband, Mr. Noya, was there with the lawyers. She had absolutely no conversation with him nor did she ask him any questions. Later she says he did say the document was the basis of a settlement but made no explanation about it and she asked for none. She did not even ask him if her sister was satisfied with the settlement, as she trusted her attorneys. She only looked at the part where the signatures were, not even at the date. Mr. Argueso was also there; he had already signed the document as a witness before coming to her house. She asked him no questions and had no conversation with him. Nobody read the document. Mr. Landron was the only one who said something about the manner of making the division, but she could not remember what it was he said (pages 107-109).

At that time she was thirty years old and not under guardianship of any sort. When Cuadra stated that the instrument was the basis of a settlement which did not prejudice her, he did not explain what it was or the parties to it but only asked her to sign it and because of that she signed it, having implicit confidence in him (pages 111 and 112).

We believe that the remainder of complainant's testimony on cross and redirect examination, as well as some questions put by the judge, did not materially affect its purport, and we insist that the facts testified to by her came very far from showing such deceit or misrepresentation as would cause a court of equity to set aside such an agreement.

First, in regard to her failure to read the document. She admits that no one prevented her from reading it or advised her not to read it; she further admits that the only person pretending to state any part of its purport was Mr. Landron, the lawyer of her mother. She insists that her

own lawyer, Cuadra, "encouraged her to sign it," but fails to specify any word or act which the court can construe for itself. The responsibility for failure to read a contract where no inducement not to read it is held out was clearly stated many years ago by Mr. Justice Hunt for this court, and has never been since questioned:

> "That defendant did not read the charter and by-laws, if such were the fact, was his own fault. It will not do for a man to enter into a contract, and, when called to respond to its obligations, to say that he did not read it when he signed it, or did not know what it contained. If this were permitted, contracts would not be worth the paper on which they are written. But such is not the law. A contractor must stand by the words of his contract; and if he will not read what he signs, he alone is responsible for his omission."
>
> Upton *vs.* Tribilcock, 91 U. S., 45.

Second, in regard to the motives inducing her signature. Her various statements practically amount to this: that she had two motives or reasons for signing, as she claims she did, without reading or asking for an explanation which would really explain; first, because her sister had signed and she was confident the sister would not have done so had she not been convinced it protected her interests; and, second, because she had confidence in her attorney and was depending on his judgment. As to her first motive, if her confidence in her sister's judgment was misplaced, the principle is the same as in case of her failure to read—she must accept responsibility for the results of her misplaced confidence. The husband of that sister was there present, of whom she might have inquired more particularly about the reasons which had influenced them, but she admits that she did not. As to her second motive, if she relied on the judgment of her attorney and his judgment was simply at fault, if he merely recommended a bargain which seemed to him advantageous but which she afterward concluded was

a bad one, that cannot be ground for interference. It will doubtless be claimed that her attorney was then acting in collusion with Landron, the attorney of the mother, but we submit that complainant shows not the slightest foundation for such an opinion, outside of her imagination. This attorney, Cuadra, was at the same time to her knowledge representing her sister jointly with herself. The two obtained exactly equal advantages under the agreement—and when he went ahead in representation of both to join Landron, as provided in the agreement itself (a part of her testimony, pages 84-5), to institute the dominion proceedings, it was his duty to do so notwithstanding her objection to its terms, if he knew she had freely signed it, and the effect of her own testimony is that it was what the law regards as a voluntary and binding act.

Third, in regard to the effect of attending circumstances. Her admissions in that regard make her story improbable. It is inconceivable that, if she had had no previous knowledge that such a settlement had been arrived at, involving as is shown her whole inheritance, she would have signed in entire ignorance of what it contained, and without interest enough to read it as it lay on the table within reach of her hand. It is further inconceivable that, if she protested as she states when the copy was handed to her by Cuadra and received from him no satisfaction, she should have refrained from notifying her sister and her mother, with both of whom she admits she was at that time on good terms.

But, giving to every word of complainant's testimony its full probative force, we submit that nothing appears amounting in law to either fraud or deceit, such as would lead a court to set aside any written contract—to say nothing of one of this peculiar kind.

(2) While we have not been able to find a case in which the failure to observe the proper order of proof, in cases based upon actual fraud, has been the cause of reversal, there is no want of authority as to the correctness of the procedure we contended for, and upon the denial of which our sixth

assignment of error is founded. As long ago as when Justice Curtis of this court was accustomed to sit upon circuit, he stated the rule in the following language:

> "I assent to the rule laid down by the lord chancellor in Price *vs.* Barrington, 7 Eng. Law & Eq. 254, that when a bill sets up a case of actual fraud and makes that the ground of prayer for relief, the plaintiff is not entitled to a decree by establishing some one or more of the facts, quite independent of the fraud, which might of themselves create a case under a distinct head of equity."
>
> Fisher *vs.* Boody, Fed. Cas., #4814.

In a case decided on circuit by Judge Benedict, who sat so long in the Southern District of New York, the issue was whether one Josephine Cregier had been the wife of Blasius Chesebrough, deceased, and the plaintiff was attempting to introduce evidence as to the way the executor of the deceased had expended the funds of the estate before she had proved the fact of marriage. The court said:

> "The defendant objects to any inquiry on the part of the plaintiff at this stage of the case as to the investment of any money of the estate until the determination by the court of the primary question upon which the plaintiff's right to the money depends, viz., the question of marriage between Josephine and Blasius. * * * In my opinion this inquiry is premature; it should be postponed until after the decision of the court upon the principal question, viz., the question of marriage."
>
> Arnold *vs.* Chesebrough, 30 Fed. Rep., 145.

In a more recent case, Judge Goff, of the Fourth Circuit, said:

> "While equity will always relieve those who suffer from acts of fraud, it has also always required that those who seek its jurisdiction on that account shall, after having carefully scrutinized the cause of complaint, most clearly formulate the allegations of the same, and then that they shall fully prove that which

they have so alleged. We do not deem it essential to discuss this matter, elementary as it is in character."
Dashiell *vs.* Grosvenor, 13 C. C. A., 593.

To the same effect is the language of this court in a leading case:

Eyre *et al. vs.* Potter *et al.*, 15 How., 42, 56.

We therefore submit that defendants were entitled to the granting of their request to have the issue of fraud or no fraud first determined before going into the evidence at large, and we prophesy that, had that course been adopted, the result of the case would have been far different.

It therefore seems to us that the court below committed error both when it refused our motion to dismiss complainant's bill at the conclusion of her testimony in her own behalf and when it denied our motion to compel complainant to establish a *prima facie* case supporting the allegations of actual fraud made in the bill, or even to determine the issue of fraud or none, before admitting evidence upon other features of the case.

VI.

Rulings Upon Evidence.

The assignments next following in numerical order are those relating to alleged errors in rulings of the court below upon the admission or exclusion of evidence. These will now be taken up and briefly argued seriatim under this subdivision of the brief.

(1) The seventh assignment—the admission in evidence of the document marked Exhibit J for complainant. The document with our objections to its admission is found on pages 258 to 261 of the record, but to appreciate the force of the objection the court must turn to the bottom of page 252 where the offer of two documents was made by counsel

for complainant. The document in question was the second of the two and the terms of counsel's offer (top of page 253) was: "the other one is to show that at the time that Doña Manuela Gutman died, or shortly before that, she had pledged in the banking house of Ochoa & Co. her jewelry."

Turning then to page 258, the objection to the introduction of the document was "as entirely immaterial. Counsel made an offer here that this was a document showing that Victor Burset pledged Manuela Gutman's jewelry." In deciding to admit the document the court remarked "We will admit it in connection with the testimony. The paper is just as relevant as the witness's testimony. Mr. Burset seems to have been the factotum of Doña Manuela." The reference to "the witness' testimony" was to that of the representative of the firm of Ochoa & Co., Angel Gonzalez, who had testified about this document (pages 215-7). The document and all testimony concerning it will be perused in vain for any reference to Doña Manuela Gutman or her property, or for any indication that the property was not that of Burset himself, yet the remark of counsel that it showed that *she* had pledged *her* jewelry with that firm seems to have so impressed the mind of the judge that he considered it of weight sufficient to be admitted—and hence must have been influenced by it.

(2) The eighth assignment—allowing complainant's witness Strayer, supposed to be an expert on land values, to answer the question, "From your best judgment what was the value of those lands per acre in 1902?" (Record, p. 263). The objection was "unless the witness knew the land in 1902." The record shows (page 72) that the taking of the testimony before the court was begun April 3, 1905, so that was the approximate date of the testimony of this witness. The only information previously given by the witness was that he had gone over the property about a month before he testified (page 262). So that he was allowed to express his opinion of what had been its value three years,

more or less, before he had ever seen it—and that upon a single view. Cross-examination developed that the witness had been an assessor of taxes in the Treasury Department of Porto Rico for approximately six months previously, before which time he had never had occasion to inform himself as to the value of sugar lands (which these in question were) in the Humacao district of the Island (page 265). We submit that determining the question of fraudulent sales by such evidence as that is dangerous, and that the value of land at a certain time depends upon too many different considerations to be determined by a man who knew nothing of conditions in that locality until three years later.

(3) The tenth assignment—the exclusion of the question "What was the reason that the agreement signed the night of the 16th of January was drawn in the shape of a private agreement and not at that time of a public document"? asked by counsel for defendants of their witness, Cuadra (Record, p. 320).

The objection made was, "because in representing her (the complainant) we do not know what reasons she may have given him or he may have given her." The question did not call for reasons either may have given the other; it called for reasons resulting from the circumstances. Complainant was throughout intimating, and attempting to show by the proof, that complainant was asked to sign a private document so that defendants, or at least the parties representing the mother's interests, could more easily deceive her or induce her to sign; and we think we were entitled to show by this witness, who, being one of the lawyers preparing the agreement, ought to know, that it was drawn in form as a private agreement because the only notary in that vicinity was away from home, and there was no one to certify to a public instrument—a fact which was afterwards testified to by the notary himself (Record, p. 491).

(4) The eleventh assignment—the exclusion of the document offered in evidence by defendants as Exhibit 7 (Record, p. 368).

The document in question was an answer which complainant, by her attorney, Vias Ochoteca, had presented to the complaint in an incidental proceeding which had been brought by José Maria Cuadra, her former attorney, against her, claiming compensation for his services in the dominion title proceeding, and our offer was "for the purpose of showing that up to that time (Aug. 14, 1901) the complainant made no claim that she had been deceived in the execution of the private contract of settlement." The objection was lengthy and took the following form:

> "Counsel for complainant object to the introduction of the foregoing document because it is not the kind of document stated in the offer, and it is not an answer of the complainant herein, but only purports to be objections made by attorney Vias on behalf of Doña Maria Rios to the bill for fees presented by attorney Cuadra. It is not an answer in any suit instituted by attorney Cuadra, but merely objections, as aforesaid, filed by Señor Vias in the supplementary proceedings to the dominion title proceedings instituted by Cuadra for the collection of his fees, and referred to in 'Exhibit E' for complainant."

It cannot be material whether this document is a technical answer in an independent suit, or whether it is better described by the above language as "objections made by attorney Vias on behalf of Doña Maria Rios to the bill for fees presented by attorney Cuadra." The vital thing is that six months after the execution of the private agreement, and more than three months after Cuadra had begun the dominion proceedings in the name of Doña Maria—and, as she says in the present bill of complaint and in her testimony, without her knowledge or authority—the only defense she thinks of making to Cuadra's claim for fees for service in the very proceeding which she now repudiates is that they are

excessive and that Cuadra ought to require payment from both his clients instead of from one only. Not an intimation that Cuadra had not been employed to do the work; not a suggestion that he had acted in collusion with Landron and against the interests of his client; not even an objection that his advice and action had been unsatisfactory in its results. More than that, in a postscript to his "objections" there is an implied recognition of the validity and effectiveness of the private agreement where attorney Vias says, "I reserve the right to proceed in the manner best suited in order to obtain a judgment to the effect that said fees are improper, by virtue of the agreement of settlement made by the attorneys Lopez Landron and Cuadra." This can only refer to the last paragraph of the 6th stipulation of said private agreement (Record, p. 85), which provided for all legal expenses, etc., "independently of the fees of the lawyers" to be paid by the mother, Doña Manuela. Attorney Vias evidently had it in mind to take the position that the above phrase applied only to the proceedings for the ratification of the withdrawal, and that all other lawyers' fees should be paid by the mother by virtue of that paragraph.

We insist that the document which was excluded was not only admissible and material but vitally important as showing that up to that time—a period subsequent to complainant's discharge of Cuadra and employment of Vias—it had never occurred to her that Cuadra had betrayed her trust or that she had been a victim of any fraud.

(5) The twelfth assignment—the exclusion of the document offered in evidence by defendants as Exhibit 8 (Record, pp. 369 and 370).

The offer, as stated by counsel, was made for the same purpose that Exhibit 7 was offered. The objection of counsel for complainant was that "by the nature of the act of conciliation itself, in accordance with the law of civil procedure in force in Porto Rico at that time, it was not the proper time and manner of making claims of fraud, which should be

done in a complaint in an ordinary action." The ruling upon this objection is not made plain by the record, but we believe counsel for appellee will agree that the words "SAME AS ABOVE" printed just above the objection to the introduction of the document are misplaced and should follow the objection, and that their meaning is that the ruling and exception touching the admission of this document was the same as above made regarding Exhibit 7, *i. e.*, that the objection was sustained and defendants excepted.

It only needs a perusal of this document to appreciate its importance. The law of Porto Rico then provided, as stated in the objection to its admission, for an act of conciliation before beginning a suit; that is, one party could summon the other before the municipal judge for the purpose of fixing up their differences, and it sometimes resulted in avoiding litigation. Here Doña Maria Rios, the present complainant, was the actor and she summoned her sister before the judge for the purpose of asking her to do one of two things: either to agree that the agreement of January 16, 1901, had never had any validity as a transfer of their hereditary rights; or, if she would not do that, to agree that they would consider it rescinded and canceled from that time. The translation in the record is very defective, but the above is what may be gathered from it.

This proceeding is dated in December, 1901, practically a year after the signing of the private agreement. It shows that Lawyer Vias had at last conceived the idea that the private agreement was legally invalid as an attempt to transfer title—but not a word yet as to any fraud having been committed or any misrepresentation in obtaining complainant's signature to the agreement. Counsel say that this proceeding was not the proper time or manner for making claims of fraud; but it seems to us that, if its purpose was to get a compromise without a suit, that could hardly be accomplished without setting forth the causes of complaint on which suit would be based if the compromise were not arrived at.

This also, we insist, was not only an admissible document but an important one and its exclusion reversible error.

(6) The thirteenth assignment—the exclusion of the document offered in evidence by defendants as Exhibit 16. (Record, pp. 492, 495.)

This was the document which the notary, Aldrey, had drawn at the request of Cuadra two days after the signing of the private agreement, and in accordance with the provision of its 5th stipulation (Record, p. 84). It was never executed because the complainant refused to go to the notary's office for that purpose (page 492). We think it was admissible as showing the good faith of the mother, Doña Manuela Gutman, and the fallacy of the contention that a private document was made for any other reason than that the notary was out of town and no other accessible. But it has not the importance of the two previous documents.

(7) The fourteenth assignment—the admission in evidence of the document offered by complainant as Exhibit Q. (Record, p. 524-8).

The terms of the offer (page 524) were as follows: "for the purpose of showing the collection of Doña Manuela of the rental of these properties, and its amount; also for the purpose of contradicting the testimony of the witness Rafael Rocca that the properties of Naguabo produce less than the properties within the district of Humacao, for example 'Las Mulas.'" Inspection of the document will show that it was a lease of the property "Las Mulas" for eight years, from 1876 to 1882, inclusive. As to the first ground, there was no denial that Doña Manuela had charge of the administration of the estate at that time and had received the rents—the bill was not drawn in shape to require an accounting; Doña Manuela was not a party, in fact she was dead, and no representative of hers was a party. As to the second ground, this document was too remote to contradict the witness Rafael Rocca (testimony, Record, pp. 463-475) be-

cause, while he stated that he had known the land bought by defendants Garzot & Fuertes from 1884 when he had it rented, the questions as to its value were confined to the eight or ten years preceding his examination, that is, begining at the earliest with 1894 (page 474), and his comparison of production related to the time contemporaneous with his testimony.

(8) The fifteenth assignment—allowing counsel to ask complainant, when recalled to the stand, a question in the following form: "I don't think you understand my question. What I mean is that you knew that that portion of forty acres had been purchased by the Succession Bustelo?" (Record, p. 535).

In order to understand the effect of this question it is necessary to refer to the previous one, which was practically the same, and to which complainant had answered "No, sir; they belonged to the Succession of Rios because they constituted a portion of the lands——" At that point her counsel interrupted her because the answer did not suit—and, of course, then obtained the answer they desired. The objection was that the question was leading.

We are well aware of the general rule that the allowance of leading questions is largely within the discretion of the court—but we think that examination of this kind exceeded the limit.

(9) The sixteenth assignment—the allowance of two questions asked of complainant, when recalled to the stand, the first of which, after referring to a deed from the complainant for a tract of land called "Braziles," which deed had been offered in evidence by defendants, asked: "Please explain from whom did you acquire this property?" and the second of which was, referring to the same land, "So you inherited this property directly from your grandmother?" (Record, p. 539).

The objection was that the written title was the best evi-

dence. It would seem to need no argument that this objection was well founded, in the absence of any proof that her written title had been lost or was otherwise inaccessible.

(10) The seventeenth assignment—admitting in evidence the copy of the entry in the day book kept in the office of the Registrar of Humacao (Record, pp. 561-3).

This document was a certificate of the Registrar of Property for the district which included the properties in controversy and showed that on the 5th day of May, 1902, an order of the District Court of Humacao had been made giving notice to the Registry of the pendency of a suit brought in that court by Maria Rios against her mother and sister to nullify the private agreement and cancel the dominion title, referring therein to certain properties described by name and area but giving no boundaries, among them being the "Cercado Ramirez." The offer was (page 561) "to contradict the statement of Mr. Fuertes that he examined the books of the Registry and found nothing showing any claims alleged by the complainant herein in regard to the 'Cercado Ramirez' prior to the month of August, 1902." The objection was—

> "that it (the certificate) does not tend in any manner to contradict the witness Fuertes as stated by counsel; on the further ground that, as appears from the testimony of the witness last examined, the document never became a part of the records of the Registry of Property, and never was extended therein, for the reasons stated by him; for the further reason that because of such failure to extend the same in the books of the Registry of Property the same became null and void; and for the further reason that the same was nullified by the decree of the Supreme Court rendered on the fourth day of June, 1901."

(*a*) If the certificate did not tend to contradict the witness Fuertes, the first objection was good because that was the

only purpose of the offer. The part of the testimony of Fuertes referring to the examination of the Registry is found on pages 412-416. On page 413 he states that he examined the books of the Registry in regard to this property, first between March and June, 1902, casually through curiosity, later again when he was thinking of buying and a month or two before he did buy, then a third time in 1903, after he had bought. On page 414 he is asked what he found in the books regarding this property and he describes it so far as he can remember, among other things that it was recited that Doña Manuela had acquired her title through a private agreement of settlement and that it had been ordered inscribed by the Supreme Court in her name, but he did not remember whether he noticed the objections which had been made in the dominion title proceedings by Vias as attorney for Doña Maria. The cross-examination then goes off to the question of whether the witness' attorney examined the Registrar's office, then as to whether he had not heard in the community at Humacao rumors of litigation between mother and daughters—which he denied—and there is no further reference to the Registry. In the redirect examination he is simply asked (pages 419-420) whether he had any information whatever from any source of any disagreement or suit in the Rios family after the final decision of the Supreme Court, and replied that he had not. It seems to us clear that there is no relation whatever between this testimony and the Registrar's certificate that a certain entry was then in the "Day Book." And we challenge counsel on the other side to point out any statement of the witness in his whole examination to which this certificate is any contradiction.

(*b*) The second ground was because it had appeared from the evidence of the last witness, Francisco Porrata, who was, the court will notice, one of complainant's witnesses, that the certificate had never become a part of the records of the Registry. Turning back to page 558, we find the following

to be the testimony of Porrata, who had stated that he had been a clerk in the office of the Registrar for five years:

"Q. Did you inform him (Fuertes) of the entry made upon the Day Book on folio 124, dated May 5th, 1902?

"A. That entry refers to the order to which I have already referred, which order did not have any effect in the Registry, or in other words the nullity requested in the order was not entered in the Registry for the reason that I will now give you: When Mrs. Manuela Gutman sold to Mr. Victor Burset the deed was refused and her attorney, Mr. Diaz Navarro, appealed to the Supreme Court; the Supreme Court ordered the extension of the period of the presentation of the said deed; subsequently a certificate of the Secretary of the Supreme Court was presented in which the expediente de dominio was approved, and order was given for the inscription in favor of Mrs. Manuela Gutman the finca or estate sold to Mr. Victor Burset. With the said notification was again presented the deed of sale to Mr. Victor Burset which was taken from the records of the appeal taken before the Supreme Court; inasmuch as the period of presentation was in suspense the period of the presentation of the deed of sale had not expired, and that deed was presented for the purpose of correcting the defects of the denial; then was first recorded the certificate in favor of Doña Manuela Gutman, and afterwards the sale in favor of Mr. Victor Burset.

"Q. (Question last above repeated to witness.)

"A. Well, I was going to explain——

"Q. All I want to know is 'yes' or 'no.'

"A. No.

"Q. Why didn't you?

"A. For the following reasons: The certificates or the communication to which that inscription refers on page 124 of Vol. 11 of the Journal, and by virtue of the sale made in favor of Mr. Victor Burset, the note that was ordered to be made in the record of the finca of Mrs. Manuela Gutman was not recorded because this estate already belonged to Mr. Victor Burset and not to Mrs. Manuela Gutman."

It therefore appears from the evidence of their own witness that the statement of Mr. Fuertes was true that all he had seen in the Registry was the Supreme Court decree settling the right of Doña Manuela to the property and the subsequent conveyance from her to Burset.

(*c*) The third ground of objection was that, because the entry of presentation in the Day Book had not been extended in the books of the Registry themselves, such entry had become null and void. We believe this legal proposition to be correct.

It must be here borne in mind that under the Mortgage Law (which is the registry law) of Porto Rico the Registrar is a quasi-judicial officer, not a ministerial one, as generally in the States. Title II of the Mortgage Law is entitled "RECORD; ITS METHOD AND EFFECTS," from which we excerpt the following articles:

> "*Art. 18.* Registers (registrars) shall determine, under their responsibility, the legality of documents by virtue of which the record is requested, and the capacity of the parties interested by what appears from said documents.
>
> "All the documents issued by the judicial authorities shall also be determined by them under their responsibility, and for the sole purpose of admitting, suspending, or refusing their record or entry.
>
> "There shall be no further remedies than those mentioned in this law against the suspension or refusal of a record or cautionary notice, judges or courts, by virtue of judicial documents, not being permitted to compel the Registers in any other manner to record or enter.
>
> "*Art. 20* (4th Par.) Registers shall refuse the requested record, if said interest is recorded in favor of a person other than the one executing the transfer or incumbrance."

Turning now to the Regulations for the Execution of the Mortgage Law, we quote the following articles from Title XI, which treats of "MANNER OF KEEPING REGISTRIES":

"*Art. 261.* All instruments which are presented in the registry for the request of any record or entry whatsoever, shall be entered in the Day Book.

"*Art. 262.* In no case whatever shall the provisions prescribed in the preceding article be violated, even when it is seen that the instrument presented lacks some legal requisite. * * *

"*Art. 263.* The entries of presentation referred to in Article 261 shall be made immediately on the presentation of the instruments, it not being permissible to postpone them to the following day, even when the parties interested consent thereto."

Turning again to the provisions of the law under the same title as the above, we find, beginning with Art. 222, that provision is made for all the "books of the registry" before anything is said of the Day Book, which is first mentioned in Art. 237, which is followed by—

"*Art. 238.* Registers shall also keep a book called a Day Book, in which they shall make a brief entry of the contents of every document at the time of its presentation."

which is followed by provisions as to how it shall be kept, down to—

"*Art. 241.* When the Register makes the record, cautionary notice, or cancellation to which the entry of presentation refers, *in the proper book,* he shall state this fact by means of a marginal note opposite said entry of presentation, stating the volume and folio where the former may be found, as well as the number of the estate according to the Registry and the number given to the requested record."

These in connection with the following article of the Regulations:

"*Art. 56. Records* shall be made by Registers within fifteen days following the date of the presentation of the receipt showing that the fees have been paid; and should none be due on the instrument, it

> shall be so stated in the record, within the same period, computed from the date of the entry of presentation."

and the following article of the law:

> *"Art. 66.* The parties interested may object to administrative officers against the decision respecting the instrument made by the Register, without prejudice to applying, if they wish to do so, to the courts of justice to discuss and contend among themselves regarding the validity or nullity of the documents or of the obligation. In case record is suspended on account of errors in the instrument which may be corrected, and the cautionary notice is not requested, the interested parties may correct the errors *within the thirty days during which the entry of presentation is effective,"* etc.

Enough has been cited above to show that the presentation for entry in the day book, which must be done immediately and without regard to the character or defects in the instrument, is no part of the *record,* to which a document is not entitled until the registrar has examined it and determined under his responsibility that it is *registerable or recordable;* and that when a mere entry of presentation in the day book has been made, without the registrar proceeding with its recording within the fifteen days, it becomes ineffective and void after the lapse of thirty days.

We therefore insist that all our objections to the admission of this document or certificate were well founded; and that, as only by considering the same as legitimate evidence of constructive notice could the court have found against defendants Garzot and Fuertes, its admission must have been virtually prejudicial to those defendants.

(11) The eighteenth assignment—the denial of a motion by counsel for defendants to strike out a part of the testimony of Juan Vias Ochoteca as a witness for complainant relating to a conversation between him and Francisco Porrata Lliteras, another witness for complainant (Record, pp. 564-5).

The purpose of this testimony was to impeach the testimony of the other witness, as had been announced by counsel when the former witness was examined (Record, p. 559). The objection was on two grounds: that a party is not allowed to impeach her own witness, and that the testimony of Porrata showed that he was not a hostile witness. The correctness of the first ground is too well settled to require argument.

Elliott *vs.* Pearl, 10 Pet., 441.

A perusal of the testimony of the witness Porrata will convince the court that he was in no sense hostile to the complainant who called him.

(12) The nineteenth assignment—the admission in evidence of a part of the record of the testamentary proceedings over the estate of José Maria Rios y Berrios, the ancestor from whom the property in controversy descended, the same being Exhibit X of the complainant (Record, pp. 571-7).

This document was described as "the inventory made with the intervention of Doña Manuela Gutman of the properties of said José Maria Rios on the 12th day of October, 1875," and was offered "for the purpose of showing the properties left by him and which passed to the possession of Doña Manuela Gutman, and to contradict the testimony of Lopez Landron in this respect; also for the purpose of showing the valuation of said properties at that time, approved and ratified by the said Doña Manuela Gutman." The objection was that it was "Immaterial to any issue made by the pleadings and also too remote to be material in any respect" (page 570).

It is not necessary to make any extended argument upon the last ground of objection, because we are willing to rest its soundness upon the first ground. If the court refers again to the amended bill of complaint (Record, pp. 13-22), it will be found that there is no single allegation referring to any inventory of the estate of the ancestor or the value of what he left, but that the bill is solely drawn for the pur-

pose of asserting a title to a one-half interest in certain described tracts of land and praying to have the same declared and certain clouds removed therefrom. Subsequently complainant was allowed again to amend her bill (Record, pp. 41-4) and, while a *prayer* for an accounting was inserted in this amendment, no additional allegation of fact was made which changed the former character of the bill or rendered such a prayer pertinent to any of its allegations. The answers of defendants contain no reference to any such feature of the case (Record, pp. 53-68)—and those answers were considered sufficient by complainant and replications were filed thereto.

As to contradiction of the testimony of Landron, such a claim we believe to be entirely without foundation, and we leave it for appellee to show.

We submit, therefore, that the inventory in question was entirely inadmissible and was used as an afterthought in order to impress the court with the large value of the property originally under the control of the deceased mother, who was not there to defend herself or her administration.

VII.

Defendants' Motion for Final Decree at Conclusion of Complainant's Evidence.

Under this head the ninth and forty-third assignments will be considered together.

At the close of all the evidence offered in behalf of complainant, two motions were made, one on behalf of all the defendants for a final decree in their favor (Record, p. 272), the other on behalf of defendants Garzot & Fuertes for a final decree in their favor, whatever the court might find as to the other defendants, on the ground that complainant's own testimony had shown that they paid fair value for the tract of land which they had bought from defendant Palmer and had purchased the same in good faith (Record, page 275).

(*a*) Assuming that, under the evidence as admitted by the court below, there may have been enough, if it were to ignore those parts unfavorable to complainant and consider only those favorable to her, to warrant a decree in her favor as against the defendants other than Garzot & Fuertes—and we recognize the rule that we cannot ask this court to review the findings of the court below where there is a conflict of legitimate evidence—we ask the court to hold that where the complainant's own testimony, coupled with documentary evidence produced by herself, is inconsistent with a right to relief, the court below had no right to ignore such testimony and rest its conclusion upon other testimony, and to consider the merits of the motion in question in that light.

We have already presented under another head our argument as to the effect of the testimony of complainant herself, but we submit that whatever force it may have is entirely destroyed by the contents of certain documents introduced in her behalf and contained in the record, beginning on page 143.

The first document (page 144) is a complaint brought in her name in the Insular District Court of Humacao by Lawyer Vias on December 10, 1901, nearly a year after the execution of the agreement of settlement, against her mother and sister, praying the court to declare null or to rescind said agreement. The only ground of nullity alleged or claimed, as will be seen from its perusal, is its legal insufficiency to accomplish its purpose.

The second document which we cite is a letter from complainant in reply to one from her mother's lawyer, Lopez Landron, which is dated January 22, 1902 (page 163), in which again she asserts that she cannot carry out the "transaction" because it did not give her a good title—not because there was any fraud in its inception.

The third document is an act of conciliation, similar to the one which was rejected when offered by defendant (see 15th assignment of error, already argued), which took place on

October 31st, 1901, at the solicitation of the complainant, and from which we ask the indulgence of the court to copy the following from page 164 of the record:

> "Wherefore the representative of the plaintiff, being allowed to make a statement, declares that she asked for an act of conciliation with Mrs. Manuela Gutman, widow of Bustelo, who is of age, property owner and belonging in this vicinity, residing at 21 Allen street, in order that she may agree to the following:
>
> "(1) To deliver immediately to his client Maria Rios, widow of Rubio, the farm called 'Culo Prieto' in the district of Naguabo, which farm belongs to her in common with her sister Petronila because it was *adjudicated to them in the testamentary compact* of the property left at the death of their father José Maria Rios and of their brother José Maria Rios y Gutman.
>
> "(2) To grant also in favor of his client the notarial *deed referred to in the private contract made at Humacao* with the intervention of the attorneys Lopez Landron and Cuadra, *in order to carry into effect the above said division of property,*" etc.

The court will notice that this proceeding, while more than nine months after the signing of this agreement of settlement, here translated as a "testamentary compact," was about two months *before* the beginning of the suit referred to in the first document above cited. Hence it was between these two dates that complainant and her attorney made the supposed discovery of the *invalidity* of the private contract. Can there be any plainer recognition of its validity and complainant's desire to be bound by it and have it carried out than is contained in the above statement?

The same conclusion is unavoidable from the next document (pages 165-8) which is a renunciation of usufruct, executed by the mother of complainant on October 26, 1901, which was carrying out the contract on her part by freeing those properties which were to be turned over to the sisters from any claim on the part of the mother, and shows that

up to the end of October both parties were recognizing and abiding by the private contract.

The next pertinent document is the answer filed by Lawyer Vias in behalf of complainant in the dominion title proceedings (pages 177-182). Permit us to quote what is said about the settlement (pages 180-1):

> "My client is willing to fulfill and to compel the fulfillment in all its parts of what has been agreed among the several co-owners in the estate of her deceased father, but she is not ready to consent that there should prevail the interested purposes of the lawyers * * * and of her sister Doña Petronila Rios.
>
> * * * * * *
>
> "From all that has been said it appears that I am in a position to use, as I do hereby use, the right conceded to me by the mortgage law, hereby stating that the object of my opposition is simply to obtain from this court that the properties included in these proceedings should be inscribed in the registry of property in the manner required by said law, and surrounded with all the legal requisites tending to avoid in the future ruinous litigation and judicial battles.
>
> By virtue of the aforesaid I pray the court that, having this motion presented and considering me as a party on behalf of her whom I represent, may at the end approve these proceedings of dominion, making the express declaration that the properties acquired by Doña Manuela Gutman have been with the character of an heir *ab intestato* of her son by her first husband, Don José Rios y Gutman, and that those belonging to my client and to Doña Petronila come from the estate of their deceased father, Don José Rios y Berrios, and, in the event that the court should not see fit to make this order, to deny absolutely its approval because of it not being expressed in the petition for the institution of the proceedings the true title of the acquisition of the properties adjudicated to Doña Manuela," etc.

In the light of these documents, showing that from January, when the private agreement was signed, up to October,

when complainant called her mother to the act of conciliation in order that the agreement might be carried out, she continued recognizing its validity, showing further that, after that in the suit brought to nullify the contract and in the opposition to the dominion proceedings, no ground was suggested involving actual fraud or anything other than whether the contract could be effective in law to accomplish its purpose, we submit that complainant should have been held estopped by her own evidence from obtaining relief on any grounds of fraud alleged in her present bill.

Her only other basis for relief was the invalidity of the decree of the Humacao court in the dominion proceeding, but that also was dependent upon the proof of fraud, for, in the absence of that, it will not be contended that one court will review and set aside the judgments of a court of co-ordinate jurisdiction—and again she herself introduced the judgment of the Humacao court (Record, pp. 186-193) and the certificate showing that the case had been appealed and lost by her (Record, p. 231). Therefore her own evidence again affirmatively showed her to be without foundation as to her legal claim—the proper court had already passed upon it and held it unfounded.

That the Insular court did pass upon this very question, see the following extract, which is one of the findings of that court upon the evidence before it, from the final decree of November 16, 1901, which was the decree from which complainant appealed (Record, pp. 186-193, this extract on 193):

> "It appearing that Doña Maria Rios, widow of Rubio, is one of the petitioning parties to the proceedings, has signed a settlement which determines the beginning of said proceedings, has agreed as to the adjudication to each interested party according to the terms of the settlement, clauses three and four, *has made for her own the evidence corroborating the fact of the settlement,* against which acts of her own she cannot validly exercise the action belonging to persons foreign to the institution of the dominion," etc.

And this is part of the evidence introduced by complainant herself.

Wherefore we submit that, even granting there may have been a conflict in the oral evidence, this court, discarding that evidence from consideration, should hold for the reasons above stated that complainant had shown herself not entitled to recover upon either of the theories contained in her bill, and that defendants' motion for a decree in their favor at the close of complainant's case should have been granted.

> Philadelphia, etc., R. R. Co. *vs.* Howard, 13 How., 307.

(*b*) The situation as to the second motion seems to us even clearer. The allegations of the bill of complaint touching the defendants Garzot and Fuertes were that after Doña Manuela Gutman obtained her dominion title in the manner described in the bill she conveyed all the property so inscribed in her name to her son-in-law, defendant Victor Burset, fraudulently and without consideration; that he in turn fraudulently conveyed to defendant Palmer; and that Palmer, acting through Burset as his agent, conveyed one tract of the land consisting of 350 acres and called "Cercado Ramirez" to said Garzot & Fuertes "for a pretended consideration of fifteen thousand seven hundred and fifty dollars," continuing—

> "that in truth and in fact no money or consideration whatever was paid by said Garzot and Fuertes for said land but that said conveyance to them was made in pursuance of said fraudulent attempt on the part of said defendants to defeat the title of this complainant and to appropriate said lands to their own use and benefit, and defendants Garzot and Fuertes at the time well knew of the fraudulent purposes of the said Manuela Gutman and Victor Burset and Santiago Palmer to defraud your oratrix, and of the void and fraudulent character of the said proceedings in the District Court of Humacao, and of the fraudulent

and void conveyance by the said Manuela Gutman to Victor Burset and to the said Santiago Palmer (Record, p. 20).

There was a further allegation that all the defendants were insolvent (page 21).

When it came to the evidence, complainant herself called as a witness defendant Santiago Palmer (Record, pp. 204-215), who testified to the actual payment of $15,750, part in cash and the balance by mortgage security (page 208) and the payment of this balance was further verified by another of complainant's witnesses, Enrique Cerecedo (Record, p. 262). There was no evidence to the contrary, nor was there a word of evidence to support the allegation of insolvency as affecting these defendants. There could be no question of adequacy of price because the amount proven to have been paid was the same as that *then* alleged in the bill.

The evidence by which some knowledge of the alleged fraud of the mother and Burset was attempted to be brought home to these defendants consisted solely of two items, one the testimony of Nicolas Oyanguran, the other the records in the Registry of Property at Humacao. These we will now consider.

First, as to the testimony of the witness Oyanguran (Record, pp. 199-203), the material parts of his statement are as follows: That he had been personally and socially acquainted with both Garzot and Fuertes for twelve years or more; at one time Mr. Garzot approached him as to the possibility of some land formerly belonging to the estate of José Maria Rios being for sale—the period he could not remember, but it was from two to four years before the time he testified. That Garzot asked witness whether witness would buy them either alone or in combination with said Garzot, to which witness replied that he would have nothing to do with them. That at that time a rumor had reached the witness that there was some trouble with the succession

(meaning, among the heirs). That he made no specific objection to the title because he only knew the current rumor. That Garzot replied that he had consulted his lawyers and the title was all right. That he supposed Garzot had not at that time bought the lands because he told witness they were for sale. In the cross-examination the witness was asked whether he had given Garzot any definite information of trouble, to which he replied: "No, because I didn't know anything about it. I knew there was some suit between the mother and the daughter, but I did not specify what particular case it was."

The above is absolutely all the witness said upon the subject of the title to the lands in question. All Oyanguran knew was that there had been some suit between the mother and daughter, but Garzot knew that too because he told the witness he had consulted his lawyer about it and had been told the title was all right. Had not Garzot a right to believe that his friend was talking about the suit which had been already decided and upon the strength of the decision of which by the courts he was about to purchase? Was such a conversation any reasonable notice of *new litigation*? We think no court would so hold, and to that point cite the following authorities:

> "But in order to charge a purchaser with knowledge of a prior unrecorded conveyance, he or his agent must either have knowledge of the conveyance, or at least of such circumstances as would, by the exercise of ordinary diligence and judgment, lead to that knowledge, and vague rumor or suspicion is not a sufficient foundation upon which to charge a purchaser with knowledge of a title in a third person. * * * Notice of a sale does not imply knowledge of an outstanding and unrecorded conveyance.
>
> "The attorney's 'information of the sale to McMillan' with the purchase money unpaid was evidently no more than of a bargain between Mrs. Dignowity and McMillan, and not of any deed of conveyance. He searched the records and found no

such deed, and advised the United States that the title was good. * * *

"The evidence appears to us wholly insufficient in fact and in law to support the conclusion that the attorney had any notice of the previous deed to McMillan or any knowledge of such circumstances tending to prove the existence of such a deed, that he should have considered or treated them as of any weight, or have reported them to the authorities at Washington."

Stanley *vs.* Schwalby, 162 U. S., 255, 276.

"We do not think a mere change in the opinions of the officers of the government, as to the validity of the company's title, although made known to parties proposing to purchase from such company, is sufficient to take away from them the protection of good faith. A party may have notice of conflicting claims, and still, in the exercise of an honest judgment as to the rightful owner, buy property and pay for it, and be acting in good faith. So far as suits are concerned, all the decisions of the courts have been, up to that date of the last deed, in favor of the title of the company. Thus the purchasers had not merely the action of the Land Department in issuing the patent, but all past decisions of the courts, justifying their conclusions."

United States *vs.* So. Pac. R. R. Co., 184 U. S., 49, 54.

See also the cases cited in the body of the above quotation from Stanley *vs.* Schwalby, and the following:

Van Ness *vs.* Bank of U. S., 13 Pet., 21.

U. S. *vs.* Cal., etc., Land Co., 148 U. S., 40, 44.

Moelle *vs.* Sherwood, 148 U. S., 21.

U. S. *vs.* Detroit T. & L. Co., 200 U. S., 322.

But even if Garzot had heard these rumors, or information sufficient to put him on inquiry was given by the witness, all the authorities seem to hold that good faith is exercised when the party so notified seeks legal advice on

the matter—and that Garzot had done so was testified by complainant's witness himself.

Second, as to the notice from the Registry. The only evidence upon that subject introduced by complainant as part of her main case is the certificate of the Registrar marked Exhibit "H" for complainant (Record, pp. 229-232).

The first entry in this certificate begins by giving the boundaries of the "Cercado Ramirez" and its value as $15,900. It then proceeds to recite the bringing of the action in which the dominion title was adjudicated, stating practically all the details thereof from beginning to end, and the latter part thereof is as follows (page 231, top):

> "decision being rendered on the 16th day of November last, signed in Guyama by the presiding judge, Don Salvador Fulladosa, and the associate justices, Don J. M. Kearney and Don Jacinto Texidor, before the secretary, Don José R. Aponte, approving the proceedings and ordering the inscription of the same in this registry and as regards this property, in favor of Doña Manuela Gutman without limitation or reservation of usufruct, and having taken an appeal of cassation for violation of law to the supreme court, the said lawyer Señor Vias, the same was dismissed for each and every one of the grounds upon which it was based. In virtue whereof having examined the Registry, and it appearing therefrom that in favor of Doña Avelina Rios there appears inscribed an interest of 87 cuerdas, 6337-1000ths of another, through inheritance from Don José Maria Rios, and that there have been summoned and heard the heirs of Doña Avelina Rios, Don Emilio and Don Alfonso Faura, without making any opposition thereto, and having summoned nominally the absentees by means of the official papers and edicts, the said Doña Avelina, Doña Emèrita, Doña Josefa, and Doña Carmen Faura, and Don José Pou y Rios, without making any opposition, and in accordance with rule 5 of article 395 aforesaid, I inscribe the full dominion of this property in favor of Doña Manuela Gutman de Lara, widow of Bustelo, by title

> of settlement in a private agreement, and without limitation or reservation of usufruct," etc.

The second entry in the certificate describes the property as that of Doña Manuela, reciting again that her ownership was "by title through settlement in private agreement," and records the presentation in the Registry of a deed of conveyance from her to Victor Burset Masferrer for the price of $43,300, of which she received in the presence of the notary $37,690, the remainder to be paid by the purchaser for account of the seller. It then states that the registration was refused for certain defects, that the notary who made the deed appealed from the Registrar's ruling, and then it says (page 232):

> "and there having been corrected the defects which caused the said refusal by virtue of the dominion title proceedings approved by the supreme court of this island on the 4th of June last, which proceedings have been presented simultaneously with the deed referred to to the effect of correcting the errors above mentioned, at 9 a. m. of the 27th of June last, within the extended time granted by order of the Supreme Court aforesaid, in consequence whereof I do hereby make the inscription of the deed of sale aforesaid in favor of Señor Burset. In virtue whereof I inscribe in favor of Don Victor Burset Masferrer the property of this number through title of purchase, giving to the inscription a retroactive effect for the purpose of Art. 28 of said Mortgage Law, to the date of the entry of presentation," etc.

We have never been able to understand where the court and counsel for complainant found in these entries any notice of defect in the title. They recite judicial proceedings whereby the title had been adjudicated in full dominion to the grantor of Burset, who deeded to Palmer, from whom Garzot & Fuertes bought. They show that complainant had been a party to these judicial proceedings and had even carried her appeal to the higher court, and that every question

raised by her counsel had been decided against her. Can it be contended that such entries could be notice that complainant had other grounds of claim which had *not* been raised by her counsel and *not* adjudicated against her, and hence which she was free to assert at such time as it pleased her? Such a proposition is an absurdity.

Let it be understood that we are *not now* dealing with the question of *res judicata* as against complainant, but with the question whether a purchaser looking at this record in the Registry and seeing these decisions of the courts would be *put on notice* that said decisions were *wrong,* although one was of the highest court of the island, and that some other court at some future time could upset them to his prejudice. If the affirmative of this proposition be true, there can be no such thing as an innocent purchaser for value.

Some contention was made that the price paid by these defendants was not the full value of the property. This court will not review the conflicting evidence on this point, but there is uniformity of decisions that inadequacy of price alone is not sufficient. The rule laid down in this respect in Eyre *vs.* Potter, 15 How., has never been questioned, nor its language improved upon:

> "Again, it is ruled that inadequacy of consideration is not of itself a distinct principle of equity. The common law knows no such principle. The consideration, be it more or less, supports the contract. Common sense knows no such principle. The value of a thing is what it will produce, and it admits of no precise standard. One man in the disposal of his property may sell it for less than another would. If courts of equity were to unravel all these transactions, they would throw everything into confusion, and set afloat the contracts of mankind. Such a consequence would of itself be sufficient to show the injustice and impracticability of adopting the doctrine that mere inadequacy of consideration should form a distinct ground for relief. Still there may be such an unconscionableness or inadequacy in a bargain as to demonstrate some gross imposition or some

> undue influence; and in such cases courts of equity ought to interfere upon satisfactory ground of fraud; but, then, such unconscionableness or such inadequacy should be made out as would, to use an expressive phrase, shock the conscience and amount in itself to conclusive and decisive evidence of fraud."

In addition to total want of such evidence, we call to the court's attention that the price paid as proven by complainant's own witnesses was the full value of the land as then alleged in her bill of complaint, and as shown by the first entry of the Registry introduced by her as Exhibit "H" above referred to and quoted from.

We confidently submit, therefore, that error was in any event committed in refusing our motion, when made at the close of complainant's case, to dismiss the bill as against the defendants Garzot and Fuertes.

VIII.

Right to Change Theory of Case by Amendment After Proof.

The twentieth assignment of error was that the court erred in allowing complainant to amend her bill, after the conclusion of the evidence, so as to make the same conform to the proofs.

These amendments are shown on pages 578-9 of the record, and the exception of defendants to the allowance at the bottom of the latter page. We are well aware that the allowance of such amendments as do not change the theory or substance of the bill are within the discretion of the court for the purpose here stated; but we submit that these amendments were inconsistent with the theory of the bill. The value of the different tracts of land was of no importance except as it referred to the two tracts sold, one to Garzot & Fuertes, the other to Petronila Rios, the sister of complainant. The allegations of the bill (Record, p. 20) were that

neither Garzot & Fuertes nor Doña Petronila *paid any value whatever,* and that the transfers were wholly simulated and fraudulent. Counsel for complainant apparently realizing that they had failed to prove these allegations, but having more confidence in having proven that the tracts were more valuable than they had alleged or than the sums paid for them, induced the court to allow these amendments so that they could claim and argue that the inadequacy of price—not the entire want of consideration—was a badge of fraud in their transfer. The allegation of value as to "Cercado Ramirez"—the tract purchased by Garzot & Fuertes—was raised from $15,000 to $35,000, and that as to the "Cercado de Torres"—a part of which was acquired by Doña Petronila—was raised from $500 to $25,000.

In a case in the Circuit Court of Appeals of the Fifth Circuit, speaking of an allegation of value in a similar case, the court says:

> "The price Mrs. Goerz paid was not so inadequate as to put her on notice of any defect in the title. She paid $4,000, four-fifths of the value asserted in complainants' bill, and there is highly respectable authority for holding that complainants are estopped from denying the truth of their averments. See 1 Daniel, Chancery, 838, 832n."
>
> Goerz *vs.* Barstow (C. C. A.), 148 Fed. Rep., 562.

However that may be, we submit that the amendments proposed and allowed changed the issues which defendants were to meet and were inconsistent with the case as previously made by the bill. A good test is whether evidence of inadequacy of price was material under the allegations and prayer of the bill before amendments, and we contend that the alleged inadequacy of price was foreign to the issues upon which the evidence was adduced and the case closed.

We submit that the allowance of the amendment was an abuse of any discretion regarding amendments at that stage of the case, and that reversible error was committed in this regard.

IX.

Findings of Fact Wholly Unsupported by Evidence.

Under this head will be discussed assignments which challenge the correctness of the findings of fact by the court below.

Preliminary to this discussion we desire to state the grounds upon which we contend that errors of this character are open to the consideration of this court, as that question will doubtless be raised. We recognize the well-settled rule that, in cases brought to this court by appeal from the regular territorial courts, the findings of fact made by the court below upon conflicting evidence will not be reviewed here, and we admit that the rule has been even more broadly stated in some decisions to the effect that the jurisdiction of this court "apart from exceptions duly taken to rulings on the admission or rejection of evidence is limited to determining whether the findings of fact support the judgment."

Idaho, etc., Co. *vs.* Bradbury, 132 U. S., 509.
Herrick *et al. vs.* Boquillas, etc., Co., 200 U. S., 96.

But in none of these appeals from the regular territorial courts, so far as we have discovered, has this court gone to the extent of saying that it would refuse to consider whether a finding of fact is supported by *any* evidence; and in view of the previous decisions of this court upon the very similar wording of the rule regulating appeals from the Court of Claims we think these questions should be considered so far as to determine whether the court below has made a finding contrary to the positive and uncontradicted evidence, or even wholly unsupported by legally admissible evidence.

The statute regulating appellate proceedings from the courts of Porto Rico to this court is section 35 of the act of Congress of April 12, 1900, which has been several times quoted in the opinions of this court (Royal Ins. Co. *vs.* Martin, 192 U. S., 149), the pertinent language of which is that

"writs of error and appeals shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States." It has been, and doubtless will be in this case, claimed that this language makes applicable to the appeals from our courts *all* the provisions of the act of Congress of April 7, 1874 (18 Stats. at Large, 27), which says that the appellate jurisdiction of this court—

> "over judgments and decrees of said territorial courts in cases of trials by juries shall be exercised by writ of error and in all other cases by appeal, according to such rules and regulations as to form and modes of proceeding as the said Supreme Court have prescribed or may hereafter prescribe; provided, that on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below, and transmitted to the Supreme Court, together with the transcript of the proceedings and judgment or decree," etc.

But we are not satisfied that such a result follows so far as the extent to which this court will review the cases is concerned. This court had occasion in a very important case to construe the meaning of the phrase "in the same manner and under the same regulations and in the same cases," used in the aforesaid Section 35, and its meaning was held to be much more restricted. We ask indulgence to quote:

> "Nor does it seem to us that the phrase 'in the same manner and under the same regulations, and the writ shall have the same effect' is intended to furnish the rule by which the court shall be guided in the considerations which should enter into the judgments that it shall render. That the writ of error shall have the same effect as if directed to a circuit

court can mean no more than that it shall transfer the case to the Supreme Court, and with it the record of the proceedings in the court below. This is the effect of the writ and its function and purpose. When the court comes to consider the case it may be limited by the nature of the writ, but what it shall review, and what it shall not, must depend upon the jurisdiction of the court in that class of cases as fixed by the law governing that jurisdiction.

"So the regulations here spoken of are manifestly the rules under which the writ is issued, served, and returned; the notice to be given to the adverse party, and time fixed for appearance, argument, etc. Another important effect of the writ and of the regulations governing it, is that when accompanied by a proper bond, given and approved within the prescribed time, it operates as a *supersedeas* to further proceedings in the inferior court. The word 'manner' also much more appropriately expresses the general mode of proceeding with the case, after the writ has been allowed, the means by which the exigency of the writ is enforced, as by rule on the clerk, or mandamus to the court, and the progress of the case in the appellate court; as filing the record, docketing the case, time of hearing, order of the argument, and such other matters as are merely incidental to the final decision by the court. In short, the whole phrase is one eminently appropriate to the expression of the idea that these cases, though coming from State instead of Federal tribunals, shall be conducted in their progress through the court, in the matter of the general course of procedure, by the same rules of practice that prevail in cases brought under writs of error to the courts of the United States.

"This is a different thing, however, from laying down rules of decision, or enacting the fundamental principles on which the court must decide this class of cases. It differs widely from an attempt to say that the court in coming to a judgment must consider this matter and disregard that. It is by no means the language by which a legislative body would undertake to establish principles on which a court of last resort must form its judgment."

Murdock *vs.* Memphis, 20 Wall., 590.

If this court is still of opinion that by such phrases Congress did not "attempt to say that the court in coming to a judgment must consider this matter or disregard that," but that it was only intended to fix "the rules of practice" by which these cases "shall be conducted in their progress through the court," we submit that, coming from inferior courts established and acting under the same Federal authority, the general rule shall be applied to them which is clearly stated, on a previous page of the same case above quoted from, as follows:

> "The appeal, which is the only mode by which a decree in chancery or in admiralty can be brought from an inferior Federal court to this court, does bring up the whole case for re-examination on all the merits, whether of law or fact, and for consideration on these as though no degree had ever been rendered."

But it will answer our purpose in this case if the court will follow the decisions above referred to touching its review of the judgments of the Court of Claims. Section 708 of the U. S. Rev. Stat. provides that appeals from the Court of Claims "shall be allowed under such regulations as the Supreme Court may direct." Pursuant to that authority this court made a rule, among others, that the record should contain "a finding by the Court of Claims of the facts in the case established by the evidence, in the nature of a special verdict, but not the evidence establishing them," etc.

This rule and the statute governing appeals from the territorial courts are therefore practically identical in providing that the lower court shall make findings in the nature of a special verdict which shall be transmitted to this court in place of the evidence at large; but oftentimes, as in the case at bar, it is necessary for the court also to send up the evidence taken so as to obtain an intelligent review of the rulings on admission and rejection of evidence, as further provided by the statute. And when that is done this court will, as we

understand it, investigate whether there is any legitimate evidence whatever to support a finding of fact.

In a recent case Mr. Justice White quoted with approval the language of this court in the earlier case of United States *vs.* Clark, 96 U. S. 40, as follows:

> "But we are of opinion that when that court (the Court of Claims) has presented, as part of their findings, what they show to be all the testimony on which they base one of the essential, ultimate facts which they have also found and on which their judgment rests, we must, if that testimony is not competent evidence of that fact, reverse the judgment for that reason. For here is, in the very findings of the court, made to support its judgment, the evidence that in law that judgment is wrong. And this not on the weight or balance of testimony, nor on any partial view of whether a particular piece of testimony is admissible, but whether upon the whole of the testimony as presented by the court itself, there is not evidence to support its verdict; that is, its finding of the ultimate fact in question."

And Justice White there stated the question to which this citation was directed in the following words:

> "It was contended that this court will, as a matter of law, where the record enables it to do so, determine for itself whether the ultimate facts were solely deduced by the court below from evidence which was wholly illegal. And upon the foregoing legal proposition it is asserted, first, that it is disclosed by the record that there was no evidence whatever tending to show that the depredation was committed by the Mescalero Apache Indians; and, second, that the record also discloses that the conclusion of fact that the Indians committing the depredation were not in amity was solely rested by the court upon certain official reports and documents which were inadmissible."
>
> Collier *vs.* United States, 173 U. S., 79, 81.

After thus stating the proposition and citing the previous case it is held that the record is not in proper condition to

raise the indicated questions because all the evidence had not been sent up in the record. But in the case at bar we have all the evidence duly forming a part of the record, and we therefore submit that, for either of the reasons specified, this court should inquire into the errors now to be discussed.

(A) The twenty-first error—the finding that all the properties of José Maria Rios y Barrios which were involved in this suit had been inherited by him from his father and mother, contained in the 3d finding of facts (Record, p. 586).

We not only allege that there is not a syllable of oral or written evidence from beginning to end of this record to support this finding, but the direct contrary of the finding is proven by the "Exhibit K," which was introduced by complainant herself (Record, pp. 272-5). This Exhibit is a certificate from the registrar of property of that district showing that portions of the various properties, described by the names of "Islote Rivalta," "Cercado Ramirez," "Madame Duran," "Cercado de Torres," etc., all of which names appear in the description of the lands in complainant's bill (Record, pp. 14, 15), were *bought in the year 1875* (just before his death) by José Maria Rios y Berrios from two of his sisters and the children of another sister. Even the allegation of the bill was only that this property "was derived by inheritance from his father and mother, and *by purchase from his sisters* with his separate funds" (page 14). But there is no evidence that the money was his separate estate—on the contrary this "Exhibit K" shows that the purchase price remained largely unpaid, and, as he died in that year, naturally had to be paid by Manuela Gutman after his death out of the assets of his estate. In the absence of evidence that property is purchased with the separate estate of one of the spouses, the *presumption* is that the purchase was made with funds of the ganancial partnership.

Sentence of Supreme Ct. of Spain, Jan'y 28, 1898. Juris. Civil, Vol. 83, p. 218.

(B) The twenty-second error—the finding that Manuela Gutman had made no partition of the inheritance with her children prior to her death, contained in the 4th finding of fact (Record, p. 589); and

The twenty-third error—the finding that complainant had never transferred or relinquished her title or estate in any of the property left by her father, contained in the 7th finding of fact (page 589), may be considered together.

The decision upon these assignments depends upon the conclusion of the court as to the legality and binding force of the partition of the property made by virtue of the private agreement of settlement, which has been discussed under previous heads of this brief; as it is not claimed that any previous partition had been made. If the private agreement was valid and the dominion title obtained by virtue thereof effective, then these findings of the court were without legal evidence to sustain them.

(C) The twenty-fourth error—the finding that the whole share of José Maria Rios 2d in the estate of his father was "Bienes reservables," not subject to any claim of the mother for "gananciales" or services as executrix of the will, contained in the 7th finding of fact (page 589);

The twenty-fifth error—the finding that at the death of José Maria Rios y Berrios there was no community property, or "ganaciales," in which his widow had an interest, contained in the 8th finding of fact (same page);

The twenty-sixth error—the finding that the interest of the widow, Manuela Gutman, in the estate of her said husband was 8,000 pesos and no more, and that during her administration she applied to her own use a sum greater than the amount of such interest, contained in the 8th finding of fact (same page); and

The twenty-seventh error—the finding that said Manuela Gutman applied to her own use all the proceeds and profits of the entire estate of her said husband, contained in the same finding of fact (same page), may be considered together.

It is sufficient as to these findings to say that there was no evidence introduced by the complainant which could give the court any information upon which to base such findings. The oral testimony does not touch upon any of these subjects. Complainant introduced in rebuttal a document containing the appraisement of the estate left by José Maria Rios y Berrios in 1875, when he died, which tended to show (if the court holds it to have been properly admitted) that the net value of that estate was something over 220,000 pesos at that time (Record, pp. 576-7); but the complainant herself also introduced the deed of renunciation of usufruct, in which it was set out that he brought to the conjugal partnership only the sum of 147,000 pesos (Record, p. 165), which would tend to show by their own evidence that there was a ganancial profit of at least 73,000 pesos.

There was absolutely no documentary proof as to what disposition had been made of the income of the estate during the administration of the widow, but the certificate of the Registrar on pages 272-5 and the list of liabilities of the estate on page 576, both showing a mortgage indebtedness before and at the time of the death of José Maria, amounting to more than 43,000 pesos, upon the very properties which are shown to have an unincumbered title in 1901, and the latter showing other indebtedness of 30,000 pesos more, are pretty conclusive evidence that at least a part of the income was used in paying off these incumbrances. This is further supported by the testimony of defendants' witness, Landron, on pages 284 and 306. Then there is the admission of the complainant herself that her mother paid her part of the time $100 per month and part of the time $80 per month, which, while perhaps a comparatively small sum, is certainly contradictory to the finding that her mother appropriated it all (Record, p. 116).

(D) The twenty-eighth error—the finding that the private agreement of settlement was collusively drawn, and com-

plainant's signature thereto obtained by misrepresentation and deception, contained in the 9th finding of fact (page 590);

The twenty-ninth error—the finding that complainant repudiated said private agreement after discovering within a day or two the misrepresentation and deception practiced upon her, contained in the 10th finding of fact (same page);

The thirtieth error—the finding that the attorneys, Landron and Cuadra, conspired to defraud complainant by the institution of the dominion proceedings contained in the 11th finding of fact (page 591); and

The thirty-first error—the finding that the declaration of a dominion title was collusively obtained, contained in the 12th finding of fact (same page), may be considered together.

The considerations applying to all these assignments of error have been discussed already under subdivision VII of this brief in their relation to the denial of defendants' motion for a decree in their favor at the close of complainant's case. If the court holds that it has power to review findings of fact where the evidence is conflicting, we would further claim that, even if the court should hold that a *prima facie* case of fraud or collusion was made by complainant, the evidence on behalf of defendants overwhelmingly disproved that *prima facie* case. But we are content to rest our argument upon the proposition that the documentary proof offered by complainant herself left the above findings without competent or legal evidence to sustain them.

(E) The thirty-second error—the finding that said proceedings for the declaration of a dominion title were carried on and concluded as *ex parte* proceedings, contained in the 12th finding of fact (Record, p. 591).

In the first place, this is not in substance a finding of fact but a finding of law. The question of the character of a legal proceeding cannot in its essence be one of fact.

But, whichever it may be such a finding is contrary to the

record itself—which is the only evidence by which it can be tested. The court needs only to turn to the "sentencia," or final judgment, in that proceeding which was introduced by complainant herself as "Exhibit E 4" (page 186) and to the written opposition made by lawyer Vias as attorney for the complainant (page 177), complainant's Exhibit "E 2." The same thing further appears from the decision of the Supreme Court of Porto Rico on appeal, the introduction of which in evidence is shown on page 275 of the Record, but which, to avoid repetition, is only printed on pages 37 to 41 of the Record. It appears on page 39, where the court is reciting the grounds of appeal stated by the present complainant, that in one of the grounds of her appeal she alleged that a "violation of Article 395 has also been committed inasmuch as, after having admitted the motion of opposition of Doña Maria Rios and accepted the evidence tending to prove it, the order appealed from could not have been given without previously hearing all the parties in interest, which order does not cover the claims made by Doña Maria, which have not been decided." If there were opposite sides and "all parties in interest" were to be heard according to complainant's own contention, how can she now claim or the court find that the dominion title proceedings were "concluded as *ex parte* proceedings"?

(F) The forty-fourth error—the finding that the conveyances made subsequent to the registry of the title in Manuela Gutman, including the conveyance to defendants Garzot & Fuertes, were without consideration.

As we have already had occasion to point out, the complainant called defendant Palmer as a witness, and also called Enrique Cerecedo, both of whom testified to the value paid by Garzot & Fuertes for the tract bought by them? (See page 107 of this brief.) There was no evidence to contradict those statements, while they were afterwards supported more in detail by the testimony of Mr. Fuertes him-

self. Therefore, this finding, at least so far as defendants Garzot & Fuertes were concerned, was contrary to the uncontradicted evidence introduced by complainant herself.

X.

Errors of Decree Regarding Ganancial Rights.

The thirty-third and thirty-fourth assignments of error may be considered together. The former alleges error in the conclusion of law that the property described in the bill descended to the children of José Maria, Sr., without being subjected to the rights of the widow as ganancial property, and the latter that these properties did not form a part of the conjugal society.

We have already under subdivision IX (A), and (C), called attention to the parts of the evidence which show that the value of the estate of José Maria, Sr., at the time of his death was more than he brought to the conjugal partnership and that at least a part of said estate had been acquired by purchase during his married life, in fact just before his death leaving a large part of the purchase price unpaid. But in fact the Spanish law went much farther than we have gone in argument—went to the extent of holding that whatever did not affirmatively appear to be the separate property of one of the spouses was presumed to belong to both as ganancial property. The 3d syllabus of a decision of the Supreme Court of Spain, rendered December 29, 1873, is as follows:

> "Que si bien la ley 4°, tit. 4°, libro 10 de la Novisima Recopilación prescribe se reputen como bienes gananciales en la sociedad conyugal los que señaladamente no se justifique pertenecen á uno de los conyuges individualmente, semejante calificación no es dado determinarla con exactitud ántes de practicarse el inventario y division de la herencia, de cuyo resultado ha de desprenderse la naturaleza, cuantia y procedencia do los mismos bienes."

of which a translation is as follows:

> "Although Law 4, Title 4, Book 10 of the Latest Revision (of laws) prescribes that all property not expressly shown to belong to one of the spouses individually shall be presumed to be ganancial property of the conjugal partnership, a judgment of that sort cannot be determined with exactness before preparing the inventory and making a division of the inheritance, as a result of which the nature, quantity and origin of the same property is to be deduced" (Juris. Civ., vol. 29, p. 55).

From this statement of the law two points may be seen: first, that in the absence of proof to the contrary all the property of either husband or wife at the time of death is presumed to have been acquired with partnership funds and to belong to the partnership; and second, that unless an inventory has been made of the estate of a deceased showing not only items and values but also from whence and in what manner the property was acquired (the "procedencia," as they called it) it is impossible to determine accurately what the proper and legal division will be. Therefore in the absence of such proof the presumption must prevail, and the conclusions of law made by the court were unwarranted.

That the law of ganancial rights existed in the Spanish law during the time of the matrimony of the two persons referred to in this litigation, see the following decisions of the Supreme Court:

> Decision of March 4, 1867; Juris Civ., vol. 15, p. 229.
>
> Decision of Dec. 14, 1885; Juris. Civ., vol. 58, p. 897.
>
> Decision of May 26, 1887; Juris. Civ., vol. 61, p. 830.

In the last cited case the couple were married in 1837, the wife died in 1859, and thereafter the husband, without an inventory or division, attempted to mortgage a house which he had acquired during his marriage. A translation of the first two syllabi is as follows:

"The house to which this suit refers, having been acquired by purchase by the husband during his marriage, belonged to both spouses or, what is the same thing, to the class of property called ganancial.

"In view of that, the conjugal partnership being dissolved as it was by the death of the wife, the husband was not the absolute owner of the house referred to but it belonged to him in common with the heir of his dead wife as an integral part of the conjugal partnership's own property; and therefore, he could not freely dispose of it until he should acquire a separate dominion over it by means of a liquidation, accounting and partition of the partnership assets—something he had not accomplished when he made the mortgage upon this house to secure a loan."

XI.

Evidence of Fraud Insufficient in Law.

The thirty-fifth error assigned is in finding as matter of law that the alleged deception and misrepresentation practiced upon complainant were material and relevant to the determination of her rights (Record, p. 593).

The discussion of this error may be referred to subdivision VI of this brief where the character of the proof upon this point and its legal insufficiency were argued in connection with the motion of defendants to dismiss the bill at the conclusion of complainant's evidence.

XII.

Effect in Law of Private Agreement.

The thirty-sixth error assigned is in finding as a matter of law that complainant could not divest her rights by a private agreement such as that admitted in evidence (page 593).

As to this we submit that the record evidence submitted by complainant herself as Exhibits E-1, E-2, E-3, and E-4,

and the record of the judgment of the Supreme Court upon appeal (page 37) show that this very question had been litigated by complainant in the courts of Porto Rico and had been decided against her and that the court below should have held her estopped from re-litigating the same question in that court.

But it is said by the finding of law which is assigned as the basis of the thirty-seventh error that the District Court of Humacao was without jurisdiction to devest the complainant of her interest in said property, hence its declaration of a dominion title was null and void (page 594). We have fully discussed this legal proposition under subdivision III (B) of this brief, and will not further trench upon the patience of the court than is involved in one additional short quotation, which seems too apt to be omitted:

> "But it is said that the plaintiff, in a Federal court, cannot avail himself of the right given by a State statute, to attach for a claim not yet due; that State statutes can confer no jurisdiction on the Federal court; and that, therefore, the circuit court had no jurisdiction to issue the attachment in this case. Even if it were conceded that such contention were well founded (and we express no opinion in that matter) the result would not be as claimed, that the circuit court was ousted of all its jurisdiction. It would be simply an instance in which a court having jurisdiction gave to a party greater relief than he was entitled to. Surely, the court, the matter in dispute being over two thousand dollars, and therefore a controversy within its jurisdiction, has a right to hear and determine, in the exercise of jurisdiction whether the plaintiff is entitled to this extraordinary relief. If it be conceded that it erred in granting such relief, it would be simply a matter of error, and not one of jurisdiction."
>
> Schunk *vs.* Moline, etc., Co., 147 U. S., 500, 507.

It seems to us that the above decision, together with the reasoning of this court in the case of Forsyth *vs.* City of

Hammond, 166 U. S., 506 (hereinbefore quoted, p. 66), should be decisive not only of these points but of this case.

XIII.

Effect of Judgment of Supreme Court of Porto Rico.

The thirty-eighth error assigned is to the finding of law that the Supreme Court of Porto Rico did not pass upon the merits of complainant's appeal in the dominion proceedings, but merely dismissed the same for want of jurisdiction to pass thereon (page 594).

This question has also been discussed under a previous head of this brief (III*a*); and, as there said, we fail to see the difference in legal effect whether the Supreme Court did the one thing or the other. The material thing is that complainant *sought* its intervention; if she failed to obtain it upon any of the questions she wished to present, it was because of her failure to adopt proper procedure, and the judgment of the district court of Humacao remained final and of the same force and effect as a judgment of affirmance by the Supreme Court would have been. If the judgment of either was valid, as we believe and insist the judgment of each was, then there is necessarily an end of this case; and this court must order the dismissal of complainant's bill from the court below.

XIV.

Error Holding Complainant Heir of Brother

The remaining assignments are general as to the proper action of this court in the premises, but we wish to say one word as to the thirty-ninth, which alleges error in the court below decreeing that complainant was entitled to a one-half interest in the tracts of land in controversy. This, it seems to us, cannot be correct under the law.

It is alleged in the bill that the mother inherited the part which had belonged to the third child, the son who died, but it is asserted that such inheritance was in the character of "bienes reservables"—the legal definition of which is given in the decree as a "contingent remainder," which is certainly a monument to the intelligence of the judge who signed it—that is, that she was entitled to the usufruct so long as she remained a widow. We think this argument is drawn from sections of the codes and old laws which are not applicable. The provision of the Civil Code, which was put in force in Porto Rico in 1889, was plain and to the point:

> "Art. 935. In the absence of legitimate children and descendants of the deceased, his ascendants shall inherit it from him, to the exclusion of collaterals.
>
> "Art. 986. The father and mother, if living, shall inherit share and share alike. Should one of them only survive, he or she shall succeed to the son's entire estate."

Of course this code was not in force at the time of the death of José Maria Rios 2nd, but Mr. Schmidt in his work on "Civil Law of Spain and Mexico" says in Arts. 1235 and 1236:

> "When the intestate does not leave legitimate descendants, the succession belongs to the legitimate ascendants, without distinction of sex.
>
> "Ascendants succeed to all the property of their descendants, whether acquired from the paternal or maternal line."

and the references made in his notes show that this statement of the law was derived from the provisions of the partidas and the Laws of Toro, continued in the Novisima Recopilacion, which contained the law down to the date of the above code.

It is admitted by the bill that this son died intestate and without issue, hence, the father being dead, the mother inherited "all his property, whether acquired from the pater-

nal or maternal line," and—apart for the moment from all questions of gananciales or other sources of claim—the complainant could have acquired by inheritance from her father no greater than a one-third interest.

Conclusion.

The decree of the lower court should be reversed, and the cause be sent back to that court with instructions to dismiss the bill, for the reasons assigned and argued in the subdivisions of this brief, numbered I, II, III, V, XI, XIII; but if this court disagrees with our contentions upon those points, then the cause should be sent back for a rehearing of the law and the facts for the errors committed upon the other points specified.

N. B. K. Pettingill,
George H. Lamar,
Counsel for Appellants.

APPENDIX.

IN THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

LUIS VALLECILLO Y MANDRY ET AL.
vs.
JUAN BERTRAN ET AL.

Opinion.

There are five or more complainants and ten or more respondents in this cause. It comes before the court at this time on a special plea to the jurisdiction filed by several of the respondents, which, omitting the heading, title, and signature, is as follows:

> "The above-named defendants, Juan Bertran, "José Bertran, Narcisco Basso, The Eastern Sugar "Company, Rafael Fabian y Fabian, Luis Manuel "Cintrón, Enrique Delgado and Conrado Palau "specially appearing under protest for the purpose "of this plea and for no other, say that this court "has no jurisdiction of this case and ought not to "take cognizance of the said bill of complaint for the "reason that the suit is not one arising under the "Constitution or laws of the United States or treaties "made under their authority, and because as it ap- "pears by the said bill, the defendants were not, and "still are not, all and each and every one citizens of "another state or foreign country from that of which "the complainants are citizens, but that it appears "from the said bill that the defendants Juan Ber- "tran, Rafael Fabian y Fabian and Conrado Palau "are citizens of Spain whilst the defendant Enrique "Delgado is a citizen of Porto Rico and the citizen- "ship of the defendants Narcisco Basso, José Ber- "tran and Luis Manuel Cintrón does not appear "from the said bill; nor does it appear from the bill

> "of complaint who the partners of the Eastern Sugar
> "Company are nor the citizenship or place of resi-
> "dence of said partners, nor does it appear from the
> "bill of complaint who the partners of the Banco
> "Territorial y Agricola de Puerto Rico are nor the
> "citizenship or place of residence of the said part-
> "ners."

It was agreed at the time of the hearing that a demurrer to this plea should be considered as filed by the complainants and that the bill should be considered as amended so as to show the residence of all the parties to the cause, and that after such amendment it would appear that there were one or more of the complainants residents and citizens of Porto Rico and one or more of the respondents residents and citizens of Porto Rico, the remainder of the parties on each side being either citizens of the United States or citizens or subjects of a foreign State or States. On this view of the case the argument proceeded.

The question being one of great importance, the court invited many members of the bar to present their views upon the subject, and they did so without reference to the fact whether or not they were of counsel in the case.

Counsel on both sides, as well as all counsel appearing as *amicus curiæ*, admitted in the argument that the foregoing plea would unquestionably have been good on a record as above agreed to if Congress had not enacted the law of March the 2d, 1901, hereinafter referred to.

On April the 12th, 1900 (31 Stats., 77), Congress passed an act with reference to the Island of Porto Rico, commonly known as the Foraker Act, section 34 of which, defining the jurisdiction of this court, stated that it—

> "shall have, in addition to the ordinary jurisdiction
> "of district courts of the United States, jurisdiction
> "of all cases cognizant in the circuit courts of the
> "United States, and shall proceed therein in the same
> "manner as a circuit court."

This jurisdiction was extended by section 3 of the act of March the 2d, 1901 (31 Stats., 953), referred to above, which provides:

> "That the jurisdiction of the district court of the
> "United States for Porto Rico in civil cases shall, in

> "addition to that conferred by the act of April
> "twelfth, nineteen hundred, extend to and embrace
> "controversies where the parties or either of them,
> "are citizens of the United States, or citizens or sub-
> "jects of a foreign State or States, wherein the matter
> "in dispute exceeds, exclusive of interest or costs, the
> "sum or value of one thousand dollars."

It is contended on the one hand that the language of this latter act, "the parties or either of them," does not necessarily mean all the parties on one side or the other, but includes within its purview cases where only some one or more of the parties either plaintiff or defendant or of both "are either citizens of the United States or citizens or subjects of a foreign State or States," while,

On the other hand, it is argued that the language is intended to and does include *the whole* of the parties plaintiff or *the whole* of the parties defendant, in every controversy, or the court is without jurisdiction, and that the only effect of the amendment is:

1. To enlarge the jurisdiction, as to amount, by reducing the sum a suit must involve, from two thousand to one thousand dollars, and

2. To embrace controversies where all of both parties, or all of either of them, are citizens of the United States, although they may be all citizens of the same State of the United States, and

3. To give the court jurisdiction in controversies where all of both parties, or all of either of them, are citizens or subjects of a foreign State or States, and

4. To also give the court jurisdiction in controversies where all the co-plaintiffs and all the co-defendants of any controversy differ in citizenship, being either citizens of the United States or foreigners,

and that therefore the old rule established in Stawbridge *v.* Curtiss, 3 Cranch, 267, which was after exhaustive review of many intervening cases, restated and approved by Mr. Justice Field in Coal Co. *v.* Blatchford, 11 Wall., 174, and later approved by Mr. Justice Miller in the leading case of Smith *v.* Lyon, 133 U. S., 315, that—

> "If there are several co-plaintiffs, the intention of
> "the act is that each plaintiff must be competent to
> "sue, and if there are several co-defendants, each

> "defendant must be liable to be sued, or the juris-
> "diction cannot be entertained."

has not been otherwise affected, but is still the law and binding upon this court, and that therefore where, as in the case at bar, there are citizens and residents of Porto Rico who are both co-plaintiffs and co-defendants in the controversy with citizens of the United States or foreigners or both, this court has no jurisdiction in the premises.

Although more than five years have elapsed since the enactment of this amendment, it does not appear to have ever been directly passed upon in the sense here presented. It was before the court two or three times. In Compañia Anonyma de la Luz Electricia *v.* Ponce Railway & Light Company, 1 Porto Rico, 218, the court construed the amendment to the extent of holding that one foreign corporation could sue another corporation in this court. In Martinez de Hernandez *v.* Juan Bertran *et al.*, No. 241, lately pending on the law side of this court, although the papers in the case show that the exact question now before the court was raised, yet the opinion of the court filed when overruling the demurrer does not pass on it directly but states that the question

> "has been previously passed upon by this court and it is uniformly held in construing the amendment of the Organic Act of Porto Rico, approved March 2, 1901, that where either party to a controversy is a citizen of another State, jurisdiction follows."

In Ortiz de Rodriguez *v.* Vivoni *et al.*, 1 Porto Rico, 491, the amendment was again construed, the court holding that—

> "if it be true that when the suit was brought the parties, or either of them, were not citizens of the United States or citizens or subjects of a foreign State, there was no jurisdiction."

None of these holdings aid us in determining the question as to whether or not the law as it now stands requires that all co-plaintiffs and co-defendants must be entitled to sue or be liable to be sued, respectively, or jurisdiction does not lie.

If complainants' contention here is the law, then this court has jurisdiction of every sort of civil legal controversy that can arise in the district, save cases where all the litigants on both sides are Porto Ricans or where the amount involved is less than one thousand dollars.

This, in fact, is exactly what is contended, and it is argued that such must have been the intention of Congress when it enacted the amendment referred to, because unique and peculiar local conditions, as well as the best interests of the people of the United States and of the Island, required that it should be so. And further that the manifest necessity for such broad jurisdiction caused the local Bar to press Congress for the enactment, and that it was believed such object had been accomplished until it was ascertained that doubt existed about the language of the amendment being sufficiently broad or specific to have that effect.

The question to be determined is therefore in a large measure of first impression and depends upon a proper interpretation of the meaning of the language used in the amendment. It is admitted that the jurisdiction of the court previous to the enactment of the amendment in question was precisely the same as that of a District and Circuit Court of the United States. Did the amendment increase the jurisdiction to the extent claimed?

It must not be forgotten that Federal courts are of limited jurisdiction. This is well understood and has been many times decided.

> Mexican National Railroad *v.* Davidson, 157 U. S., 208, and cases cited.
> U. S. Fed. Stats. Ann., p. 267, note.

And that if jurisdiction is not clearly given by Act of Congress, the presumption will be against it.

> Carter's Jurisdiction of Federal Courts, pp. 7-8.
> M. C. & L. M. Ry. Co. *v.* Swan, 111 U. S., 379.

One of the best considered cases of the many to be found in reports of the Supreme Court of the United States that tend to throw light upon this subject is that of Smith *v.* Lyon, 133 U. S., 315. There it was held, following Strawbridge *v.* Curtiss, 3 Cranch, 267, and a large number of cases decided after the date of that case, for nearly a hundred

years up to 1889, that the Judiciary Act, even as amended in 1887-8, 24 Stats., 555; 25 Stats., 433, when defining the jurisdiction of United States Courts when the action is between citizens of different States and providing that suits shall be brought only in the district of the residence of "either the plaintiff or the defendant," held that this language included within its compass all co-plaintiffs and all co-defendants in any suit, and states that the statute makes no provision in terms for the case of two defendants or two plaintiffs who are citizens of different States and makes no provision that both plaintiffs may unite in one suit in a State of which either of them is a citizen. In that case Mr. Justice Miller, further quoting from Chief Justice Marshall in the Strawbridge case, approves the latter's construction of the meaning of the sentence: "Suit between a citizen of the State where the suit is brought and a citizen of another State," when it was held "to mean that each distinct interest should be represented by persons, all of whom are entitled to sue or may be sued in the Federal courts. That is, that where the interest is joint each of the persons concerned in that interest must be competent to sue, or liable to be sued, in the courts of the United States." And further quotes Mr. Justice Field in Coal Company *v.* Blatchford, 11 Wall, 172, as follows:

> "In other words, if there are several co-plaintiffs,
> "the intention of the Act is that each plaintiff must
> "be competent to sue, and if there are several co-
> "defendants, each defendant must be liable to be
> "sued, or the jurisdiction cannot be entertained."

Many other cases are discussed briefly where the same meaning is given to the sentence above quoted.

Of course it is well understood that the judgment of the court should not in any degree be influenced by the construction placed upon an Act of Congress by individual members of either house in debate or in reports, especially where the language of the act itself is plain, even though the court may recur to the history of the times to ascertain the necessity or causes for the legislation.

United States *v.* Union Pacific Ry. Co., 91 U. S., 79.

"The court has nothing to do with questions of "mere policy that may be supposed to underlie the "actions of Congress."

Dewey *v.* United States, 178 U. S., 521.
1 Fed. Stats. Ann., p. xxxv, note 8.

"Our province is to declare what the law is."
Hadden's case, 5 Wall., 107.

But if, out of mere curiosity, in the light of statements made during this argument, resort is had in this instance to the report of the United States Senate made from the Committee by Senator Foraker at the time of the passage of the bill of which this amendment is Section 3, it will be found not to throw any light whatsoever on the subject more than does the language of the amendment itself. After setting out what the law was by quoting the jurisdictional clause of the act of April 12, 1900, the report continues by setting forth that section 3 of the bill extends that jurisdiction so as to embrace controversies, etc., quoting from the section we are now seeking to construe, and then goes on and says:

"As the law now stands this court has jurisdiction "where the matter in dispute exceeds, exclusive of in- "terest or costs, the sum or value of $2,000, and "where the controversy is between citizens of differ- "ent States, etc. The purpose of this amendment is "to enlarge the jurisdiction, as indicated, as to "amount; and, also, so as to embrace controversies "where both parties, or either of them, are citizens of "the United States, although they may be citizens of "the same State of the United States, and also to give "the court jurisdiction in controversies where the "parties, or either of them, are citizens or subjects "of a foreign State or States."

The report then goes on to say that this provision is very earnestly recommended in a number of letters from members of the bar and citizens of Porto Rico, the general character of which communications is set forth in an extract from a letter of Mr. F. H. Dexter, a member of the bar at San Juan, and the extract is set out. There is nothing in the extract from Mr. Dexter's letter that throws any light whatsoever upon the question at bar.

But in looking over the report of the hearings had before the House Committee on Insular Affairs, on this very subject, in the 56th Congress it appears (p. 178 report), that the bar of Porto Rico did make a direct and strong effort to broaden the jurisdiction of this court as is here contended by complainants, because the chairman of the committee states that a clause in the original draft of the bill sent to him from Porto Rico, speaking of the jurisdiction, provided that it should extend to all cases

> "* * * wherein either a citizen of the United
> "States or a citizen or subject of any foreign govern-
> "ment or sovereign is a necessary party upon either
> "side of the controversy." * * *

And it appears on the same page from the evidence of Mr. Abbott, a member of the Porto Rico bar who was there testifying before the House Committee, that the original draft of the proposed amendment on this question, made by a committee of the Porto Rico bar, used the language

> "extend to and embrace controversies where a citi-
> "zen of the United States or a citizen or subject of a
> "foreign State or Government is a necessary party,
> "etc."

Yet notwithstanding all this the amendment was passed in its present form.

But it is plain from the language of the amendment itself, that the jurisdiction given is *in addition* to what the court before possessed. The act further states that this additional jurisdiction "shall extend to and embrace controversies where *the parties* or *either* of them are," etc. Now this in and of itself is ordinary and plain language and requires us only to understand what is meant by or comprehended in the words "parties" and "either."

The best definition of the word "parties" as used in a suit in equity, that we have been able to find is contained in Rawle's Revision of Bouvier's Law Dictionary, p. 578, and is as follows:

> "The person who seeks a remedy in chancery by
> "suit, commonly called the plaintiff, or complainant,
> "and the person against whom the remedy is sought,
> "usually denominated the defendant, or respondent,
> "are the parties to a suit in equity."

As to the word "either," the best definition we can find is in the Century Dictionary, Vol. 3, p. 1857, where it is defined as:

> "Being one or the other of two, taken indifferently, "or as the case requires: referring to two units or "particulars of a class."

In the case at bar "either" refers to "parties," and if the latter word includes collectively all co-complainants and all co-defendants it would seem to follow that they all must be of the class required, that is, either citizens of the United States or citizens or subjects of a foreign State or States.

It is useless to quote authorities in support of the well-known proposition that where a law is expressed in plain and unambiguous terms, no room is left for construction; and that there can be no construction where there is nothing to construe; because construction is reserved for doubtful language.

These statements are made because in the light of the rule laid down in Smith *v.* Lyons, *supra*, the language of the amendment is plain and unambiguous. If any other effect than that admitted by the respondents here, was to be given to the act, it would have been an easy matter for Congress, instead of the language used, to have employed other and more specific words, such as, "where *any of the litigants* are citizens of the United States or citizens or subjects of a foreign State or States."

The amendment in question restricted as to its exact terms as contended for by respondents, still gives the court large additional jurisdiction over what it before possessed. To construe it as contended for by complainants would be to aid it by intendment, and to depart from sound rules of construction. This the court is not willing to do.

The demurrer is therefore overruled with costs, the plea sustained, and the bill will be dismissed unless the complainants modify their bill to conform to this opinion.

Office Supreme Court, U. S.
FILED.
FEB 27 1908
JAMES H. McKENNEY,
Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1907.

No. 141.

JUAN R. GARZOT AND FAUSTINO R. FUERTES, Co-partners under the Firm Name of Garzot & Fuertes, Appellants,

vs.

MARIA RIOS DE RUBIO.

No. 142.

VICTOR BURSET, PETRONILA RIOS DE NOYA AND Her Husband, FRANCISCO NOYA, Appellants,

vs.

MARIA RIOS DE RUBIO.

No. 604.

VICTOR BURSET, PETRONILA PATRICIA RIOS, Joined by Her Husband, FRANCISCO NOYA; JUAN R. GARZOT AND FAUSTINO R. FUERTES, Copartners under the Firm Name of Garzot & Fuertes; CATALINA ROMAGUERA, ET AL., Appellants,

vs.

MARIA RIOS DE RUBIO.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF OF ARGUMENT ON BEHALF OF MARIA RIOS DE RUBIO, APPELLEE.

FRANCIS H. DEXTER,
FREDERIC D. McKENNEY,
Solicitors for Appellee, Maria Rios de Rubio.

SUPREME COURT OF THE UNITED STATES.

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APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

BRIEF OF ARGUMENT ON BEHALF OF MARIA RIOS DE RUBIO, APPELLEE.

Statement.

The three appeals above indicated seek to bring under review in this court a decree of the District Court of the United States for Porto Rico, holding an equity term, which decree

declared, among other things, the appellee, Maria Rios de Rubio, complainant below, to be the legal owner of an undivided one-half interest in certain lands, particularly described both in the bill of complaint and the decree itself.

The complainant, Maria, declaring herself to be a loyal subject of the King of Spain, invoked the equity jurisdiction of the lower court to establish her title as heir of her father and also of a brother, who had survived his father, in and to the lands in controversy.

The defendants were:

1. Petronila Patricia Rios de Noya, complainant's sister, and
2. Francisco Noya, her husband;
3. Victor Burset, the husband of complainant's half-sister, Carolina Bustelo de Burset, and
4. Santiago B. Palmer, the husband of another half-sister, Sara Bustelo de Palmer;
5. Juan R. Garzot and Faustino R. Fuertes, co-partners, trading under the firm name of Garzot & Fuertes.

Manuel Padin y Otero and Enrique Cerecedo y Millan were also named in the bill as parties defendant, but the bill was subsequently dismissed as to them (R., 13).

After submission of the cause to the court below for final decree and after the announcement by the court of its conclusion in the premises, but before the decree itself was formally entered, it being in process of preparation by the court, the defendant Santiago B. Palmer died, and thereafter the cause was revived as to him by Catalina Romaguera, his widow, and Elena Esther del Carmen and others, his children, who together constituted his succession (R., 625), and thereafter said succession joined with Victor Burset and the other defendants above-named in praying and perfecting an appeal to this court (R., 628).

As in duty bound (Section 35 of the act of April 12, 1900; 31 Stats., 77, in part reading as follows: * * * "appeals from the final decisions of * * * the district court of the United States (for Porto Rico) shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the territories of the United States"), the trial judge made elaborate Findings of Fact, which are set forth at large in the printed transcript, at pages 586-592, as follows:

Finding of Facts.

The court finds from all the evidence produced herein, and after a consideration of the pleadings and the arguments made, the following facts:

(1) It finds that the citizenship and residence of the parties are as alleged in the bill of complaint.

(2) Jose Maria Rios, Sr., the father of complainant Maria Rios, died in the year 1875, in Porto Rico, leaving surviving him his widow, Manuela Gutman, and his three children, to wit, complainant Maria Rios, Petronila Rios de Noya, and Jose Maria Rios, Second.

(3) At the time of his death the said Jose Maria Rios, father of complainant, was the owner in his own right and his own separate estate (having acquired the same by inheritance from his father and mother) of a considerable number of properties situated in what is known, and what has been referred to in the progress of this case, as the District of Naguabo, in Porto Rico.

The said properties are as follows:

(Detailed descriptions thereof here follow.)

(4) The court finds that Manuela Gutman, the widow, took possession of all the estate, both real and

personal, of the said José Maria Rios, Sr., her husband, immediately upon his death, and during the period of approximately twenty-five years, and until shortly before the time of her death, continued the sole administration of the same without rendering account to the children above mentioned, heirs of the said Jose Maria Rios, Sr., and without having made a settlement as guardian of the said children or as executrix of the said estate, having paid or delivered to complainant only a nominal sum on account of her inheritance, and having made no partition of the inheritance or estate prior to her death.

(5) The court finds that within approximately two years after the death of her said husband, Jose Maria Rios, Manuela Gutman, his widow married one Miguel Bustelo, and by him had five children, among them a daughter who married defendant Burset, and another daughter who married a son of defendant Palmer.

(6) The court finds that on the 7th day of November, 1887, the son, José Maria Rios, Second, died intestate, and without having married, and leaving no issue.

(7) Complainant Maria Rios and her sister, Petronila Rios de Noya, both attained their majority and were respectively married some years prior to the death of Manuela Gutman, the mother, whose death occurred in the month of June, 1902.

The court finds that complainant Maria Rios has at no time transferred or relinquished her title, interest or estate in and to the property, real, personal, and mixed, of her deceased father, and that upon the death of the brother of complainant, the said José Maria Rios, Second, his one-third interest in the estate was taken possession of and used by Manuela Gutman in usufruct as *bienes reservables* (remainder over to the children of the first marriage).

The court finds that upon the death of the son, José Maria Rios, Second, Manuela Gutman was and

remained in possession of, and enjoyed as if it were her own, the entire property, assets and estate belonging to the deceased José Maria Rios, First, at the time of his death.

(*6* [8]) The court finds that at the time of the death of José Maria Rios, First, the husband of Manuela Gutman, there was no so-called community property, nor profit therefrom, but that the entire interest of the said Manuela Gutman in the estate of her said husband at the time of his death amounted to the sum of eight thousand pesos, current money of the time, and no more; and the court finds that the said Manuela Gutman during the long course of her administration collected and applied to her own use a sum greatly in excess of this amount, and no proof has been offered before this court which would justify it to make an allowance to her on any account, although some reference has been made in the evidence and arguments to expenses or debts connected with the administration of the estate which were claimed to have been paid by said Manuela Gutman. But as there is no claim made by the defendants for an accounting or affirmative relief upon this score no competent testimony has or could be offered upon this subject. The court therefore finds that no sums of money were paid by her out of her own resources; but, on the contrary, the court does find that until her death Manuela Gutman enjoyed not only the usufruct to which she was by law entitled as widow of her deceased husband, and the "bienes reservables" (as heir with remainder over of her deceased son), but that she also used and applied to her own use the proceeds and profits of the entire estate, the greater part of which belonged to the surviving daughters, complainant herein, and her sister, Petronila Rios de Noya, defendant.

But although complainant has asked for an accounting upon this score, such accounting has not been by her and her solicitors pressed during the progress of this case, and therefore the court does not consider the same for the purpose of awarding a money decree in favor of complainant.

(9) The court finds that the so-called "private agreement" of January 16, 1901, referred to in the bill of complaint was fraudulently and collusively drawn, and the signature of complainant was obtained thereto by the misrepresentations of her attorney, José Maria Cuadra, and of the attorney for Manuela Gutman, Don Rafael Lopez Landron; that there was no consideration for the said agreement paid or given to complainant, and that she was deceived by the said Cuadra and Lopez Landron as to its contents, the said deception and misrepresentation being material and relevant as to the effect and purport of said agreement and the interest which she, the said complainant, was supposed to release to the said Manuela Gutman.

The court finds that at the time of the execution of the said private agreement, complainant had a one-half interest in the entire estate of her deceased father, including the properties both in the Humacao and Naguabo districts, subject only to the life interest or usufruct of the said Manuela Gutman, as widow, to the one-fourth part of the said estate of her husband, and subject to a life interest or usufruct of the one-third part thereof previously belonging to the son, José Maria Rios, Second.

(10) The court finds that complainant became aware of the misrepresentation and deception practiced upon her in connection with the said so-called private agreement within a day or two thereafter, and that she promptly repudiated the same and refused to sign any deed or public document of any kind or character required by the recording laws of Porto Rico to carry the said private agreement into force and effect. And the court finds that the so-called "private agreement" was not executed before a notary public or with any of the formalities required by the law of Porto Rico to make the same enforceable by specific performance or subject to record for the transfer of real estate or any interest therein, or for the relinquishment of an inheritance.

(11) The court finds that within two or three days after the execution of such private agreement complainant notified her attorney, José Maria Cuadra, at

the time also attorney for all parties, that she had been deceived and had not agreed to transfer to Manuela Gutman her dominion title in the properties in the district of Naguabo as in the said private agreement was undertaken to be done; and that he had no authority for her to that end, and then she then and there terminated his employment as her attorney, and repudiated the said so-called "private agreement."

Thereafter, contrary to the complainant's instructions, and in fraud of her interest, the said José Maria Cuadra joined with Rafael Lopez Landron, attorney for Manuela Gutman, and fraudulently, in the name of the complainant, instituted the so-called "expediente de dominio" or proceedings to have the title to the Naguabo properties registered in favor of Manuela Gutman; but the court finds that this proceeding had not been authorized by complainant, but the same was surreptitiously and fraudulently instituted and carried on by the said Cuadra and Lopez Landron collusively for the benefit of Manuela Gutman, and also to secure by said fraud and misrepresentations the district court of Humacao to exercise jurisdiction.

(12) The court further finds that the declaration of *dominio* rendered through the fraud of defendants by the district court of Humacao, and as set forth in the bill of complaint was obtained by the collusion of the parties as aforesaid, and that the said proceedings to divest the title or interest of complainant in and to the properties, the subject of this suit, which she had acquired by operation of law as heir of her deceased father, and of her deceased brother in remainder, (as "bienes reservables") were carried on as *ex parte* proceedings under the "jurisdicion voluntaria" (voluntary jurisdiction) of the district court of Humacao, and no judgment has been rendered divesting complainant of her title or rights in the inheritance of her said father and brother in any action or suit at law under the "jurisdicion contenciosa" (contentious jurisdiction) of said court or any other court, in an ordinary action whose judgment could have the force and effect of *res adjudicata* by the laws of Porto Rico.

(13) The court finds that in the appeal to the Supreme Court of Porto Rico of complainant from the declaration of *dominio* in the said proceedings in the District Court of Humacao, in which jurisdiction of said court was obtained by the fraud of the parties defendant, the merits of the case were not considered, but that the Supreme Court of Porto Rico at that time was a court of cassation (casacion), and because that court, as stated in its opinion, considered the said appeal to have been improperly brought in matter of *procedure*, when it should have been for substantive law, it dismissed the same.

The court therefore finds that no court has rendered a final opinion or decision upon the merits of the questions involved in this case, and the defense of *res adjudicata* set up in the pleas and answers has not been sustained.

(14) The court finds that although the object of the present suit is to recover one-half interest by complainant in the lands above described lying in the district of Naguabo, that she has also a right to a one-half interest in all the lands in the district of Humacao, although defendants now recognize her interest and title in one-half of the land in said district of Humacao. But as complainant does not accept the provisions of the so-called "private agreement," and as this court holds the same to have been fraudulent and void, the decree in this case must extend to the properties both in the districts of Humacao and Naguabo, and the decree will establish the interest and title of complainant to one-half therein, and the same will be recorded in the registry of property by virtue of and under this decree, and the previous inscriptions in the registry of property based upon the said private agreement are found to be in accordance with said fraudulent design of the parties as set forth in the bill of complaint, and the same will be canceled but with respect to the title and interest of complainant to one-half of the Humacao properties no further decree is made that to declare that at the time of the death of Manuela Gutman, complainant was entitled to one-half thereof.

(15) The court does not consider the case required a reference to a master to ascertain the profits, for the reasons hereinbefore expressed.

The court finds that all of the transfers, as set forth in the bill of complaint of the said property or any part thereof, as against the one-half interest of complainant in and to all of the said properties, including the deed from defendant Palmer to defendants Garzot and Fuertes, and all of the said deeds, transfers, mortgages and inscriptions in the registry of property which affect in any way the one-half interest of complainant in and to any and all of the said properties were made without consideration and were simulated, and that the same were made by the collusion of Manuela Gutman, Victor Burset, José Maria Cuadra, Santiago R. Palmer and Lopez Landron for the purpose of defeating the rights and title of complainant; and the court finds that Garzot and Fuertes purchased "Cercado Ramriez" with actual and constructive notice of the rights and title of complainant and of the fraudulent conspiracy aforesaid, and that they paid therefor less than one-half of its real value; and therefore all the said transfers are null and void as against complainant's one-half interest.

From these findings of fact the trial court deduced the following CONCLUSIONS OF LAW (R., 592-594):

Upon the death of the said José Maria Rios, Sr., the title and dominion to the said properties in the district of Naguabo therefore, by the law in force, passed to and in his surviving children, the complainant Maria Rios, defendant Petronila Rios de Noya, and his son José Maria Rios, Second, subject to the widow's "cuota marital" or marriage portion of the widow, Manuela Gutman, which was one-fourth of the usufruct of the said estates in the district of Naguabo during the life of the said Manuela Gutman, or until she should contract second nuptials.

From the evidence in the case the court finds as a conclusion of law that said properties in the district

of Naguabo did not enter into or form a part of the conjugal society, and therefore the said widow Manuela Gutman was not entitled to any profits or interest therein.

And the court finds as a conclusion of law that upon the death of the son, José Maria Rios, Second, the dominion and the title of his one-third interest in the estate of his father, José Maria Rios, Sr., passed to his mother, Manuela Gutman, in the character of "bienes reservables" (contingent remainder), subject to be defeated upon the subsequent nuptials of the said Manuela Gutman.

Upon the subsequent marriage of the said Manuela Gutman, the court therefore finds as a conclusion of law that the title and interest which had passed to her from her said son in and to the one-third part of the estate became, and was, defeated, and the same became, by operation of law, then and there vested in the surviving children, complainant Maria Rios and defendant Petronila Rios de Noya, in and to the said properties in the district of Naguabo described in the bill of complaint.

The court finds further as a conclusion of law that the said Manuela Gutman did not have at the time of her death any claim or right of action against complainant or against any part of the interests of complainant in and to her interests as surviving heir of her said father in the said properties in the district of Naguabo aforesaid by reason of any of the matters, facts or things set forth and alleged in the answers respectively filed by the defendants in this cause.

The court concludes further that the so-called private agreement of January sixteenth, nineteen hundred and one, referred to in the bill of complaint, was fraudulently and collusively obtained by deception and fraud practiced upon her by her attorney, José Maria Cuadra; by the attorney Rafael Lopez Landron, attorney for Manuela Gutman and Petronila Noya; by Francisco Noya, the husband of the latter,

and by Manuela Gutman, who misrepresented to complainant the contents of the so-called private agreement and the effects thereof; and by reason of the confidential relation existing between said complainant and her said attorney, José Maria Cuadra, she was induced, contrary to her true interests, to sign the said so-called private agreement.

The court concludes that there was no consideration for the execution of the said private agreement paid or given to the complainant, and that she was deceived by said Cuadra and Lopez Landron as to the contents thereof, and the said deception and misrepresentation were material and relevant as to the effect thereof and the interest which she, the said complainant, was supposed to release to the said Manuela Gutman.

The court further finds that as a matter of law complainant could not divest her rights in and to the one-half of the inheritance of her said father by any private agreement, and that as the proof shows that she has not executed any public instrument or document transferring the same, and that no valid decree or judgment has been rendered against her for this purpose, she is now the legal owner of the one-half interest in and to the said properties in the district of Naguabo aforesaid.

The court further finds that the so-called *expediente de dominio* or summary proceedings for the declaration of title in favor of Manuela Gutman carried on in the district court of Humacao were instituted by the fraud and deception of the said José Maria Cuadra and Rafael Lopez Landron without the knowledge or consent of the complainant, and in the pursuance of a conspiracy entered into therefore between the said Cuadra and Landron for the purpose of wrongfully and fraudulently depriving complainant of her interest and title in and to the said one-half of the properties in the said district of Naguabo.

The court further concludes as a matter of law that the District Court of Humacao was without jurisdic-

tion to divest complainant of her one-half interest in and to the said properties in the district of Naguabo, and that therefore the so-called declaration of *dominion* in favor of Manuela Gutman was null and void and without force or effect.

The court further finds that, as a matter of law, neither the Supreme Court of Porto Rico, nor any other court, has passed upon the merits of these questions; and the Supreme Court of Porto Rico in the so-called appeal prosecuted by complainant from the declaration of the District Court of Humacao aforesaid only dismissed the appeal because the said court was at that time a court of cassation and not of appeal, and because the appeal taken by the complainant was based upon alleged errors of procedure rather than substantive law, and for that reason the Supreme Court of Porto Rico refused to enter into a consideration of the merits of the case.

The court therefore finds as a conclusion of law, that the pleas of *res adjudicata* presented by defendants herein are not sustained and are without merit.

The court therefore finds as a matter of law that complainant is entitled to a one-half interest in and to all of the said properties in the district of Naguabo hereinabove described.

The court concludes as a matter of law from the findings of fact herein that the following transactions set forth in the bill of complaint were null and void, to wit:

The inscription in the registry of property in favor of Manuela Gutman of the title to the said properties in the district of Naguabo; the transfer by Manuela Gutman of the said properties to defendant Victor Burset and the inscription thereof in the registry of property; the execution by the said Victor Burset of the alleged mortgage to Guillermo Ygarividez Landeon and the inscription thereof in the registry of property; the transfer by defendant Victor Burset to defendant Palmer of the said properties and the in-

scription thereof in the registry of property; the transfer by defendant Palmer to defendant Petronila Rios de Noya of the one hundred acres described in the bill of complaint and the description thereof in the registry of property; the transfer by defendant Palmer to defendants Garzot & Fuertes of the three hundred and fifty acres known as "Cercado Ramirez," and the inscription thereof in the registry of property.

The court further finds as a matter of law that complainant is entitled as against defendants to all of the costs incurred in the prosecution of this suit, including fees and costs of examiners to whom this cause has been referred for the taking of testimony.

San Juan, Porto Rico, April twenty-first, nineteen hundred and six, *nunc pro tunc* as of February nineteenth nineteen hundred and six.

(Signed) CHAS. F. MCKENNA, *Judge.*

To none of the foregoing findings of fact or conclusions of law were any objections or exceptions filed or made of record and thereafter, on April 21, 1906, the following final decree, as of February 19, 1906, was passed and made of record in the cause, viz:

The above cause having been submitted to this court, together with all the evidence taken therein, pleadings, orders and proofs of every kind, and the arguments of counsel, Francis H. Dexter, Willis Sweet, and Juan Vias Ochoteco appearing for the complainant, and N. B. K. Pettingill and Juan Hernandez Lopez appearing for the defendants; and the court being now sufficiently advised in the premises, and having prepared and submitted herewith its findings of fact and conclusions of law: therefore, in accordance therewith, on this the nineteenth day of February, nineteen hundred and six, it adjudges, orders and decrees as follows:

I.

Upon the death of José Maria Rios, father of complainant, in the year eighteen hundred and seventy-five, he left, among others, the following properties,

which belonged to his separate and individual estate, having acquired the same by inheritance from his parents, to wit:

(Here follow detailed descriptions of the properties in suit.)

II.

At the time of the death of the said José Maria Rios, Sr., his widow, Manuela Gutman, was not entitled to any interest in the said properties by virtue of the conjugal society or otherwise, and had no claim against her said husband or his estate by virtue of said conjugal society or otherwise.

III.

Upon the subsequent marriage of Manuela Gutman she ceased to have any interest in the said properties or the usufruct thereof by way of marital portion (*cuota marital*), or in any other manner whatsoever, as widow of the said José Maria Rios.

IV.

Upon the death of the son, José Maria Rios, Second, his one-third interest in the said properties vested absolutely in complainant Maria Rios and her sister, Petronila Rios de Noya, sole surviving children of José Maria Rios and of Manuela Gutman by the first marriage of the latter, the said Manuela Gutman having married one Don Miguel Bustelo subsequent to the death of her first husband and prior to the death of the said son.

V.

Upon the death of the said son, José Maria Rios, Second, the right, title and interest in and to all of the property hereinbefore described became vested, by operation of law, in equal parts in complainant Maria Rios and her said sister, defendant Petronila Rios de Noya, free from all claims whatsoever of the said Manuela Gutman.

VI.

The so-called private agreement of January sixteenth, 1901, being null and void because of the fraud and deception practiced upon the complainant, the same is hereby canceled and annulled, and the defendants or either of them, that may have copies of the same signed by complainant are ordered and adjudged to produce the same before the clerk of this court immediately in order that the same may be destroyed by him.

VII.

The dominion proceedings (*expediente de dominio*) carried on in the District Court of Humacao, and the declaration therein made by the said District Court of Humacao on the sixteenth day of November, 1901, declaring the title of the foregoing properties in and to the said Dona Manuela Gutman, are hereby declared to be null and void, because said declaration was obtained by the fraud and collusion of Rafael Lopez Landron, attorney for Manuela Gutman, and José Maria Cuadra, attorney for complainant, to the prejudice of the complainant, and because the said District Court of Humacao was without jurisdiction in the said proceeding to divest the title of complainant in and to one-half of the said properties from her and to transfer the same to Dona Manuela Gutman.

VIII.

The said declaration of the sixteenth of November, 1901, of the said District Court of Humacao in the said dominion proceedings, and the judgment of the Supreme Court of Porto Rico of the fourth day of June, 1902, on the appeal from the said declaration of dominion, are ordered, adjudged and decreed not to have the force or effect of *res adjudicata*, as not having adjudged the matters in controversy herein.

The inscriptions in the registry of property of the said dominion proceedings and of the said judgment

of the Supreme Court of Porto Rico hereby declared to be null and void as against complainant; and the Registrar of Property of Humacao will forthwith make the proper entry of cancellation thereof in so far as concerns complainant's interests in and to all of the properties hereinabove described.

IX.

The court further orders, adjudges and decrees that as to the one-half interest of complainant in and to the properties hereinbefore described, the following transfers and sales, and the mortgage hereinafter described, were and are null and void as being without legal force or effect to transfer the interest of complainant and because the same were executed in fraud of her rights, to wit:

Deed and sale of said properties, executed by Manuela Gutman to Victor Burset on the thirtieth day of April, 1902, before the notary Herminio Diaz.

Mortgage executed by defendant Victor Burset to Guillermo Ygarrividez Landron on July first, 1902, before the notary Herminio Diaz.

Deed and sale by defendant Victor Burset to Santiago R. Palmer on July sixth, 1902, before the notary Herminio Diaz.

Deed and sale by defendant Santiago R. Palmer to defendants Garzot and Fuertes of the three hundred and fifty acres known as "Cereado Ramirez," on August 26th, 1902, before the notary Santiago R. Palmer, defendant herein. As to this deed and sale the court orders, adjudges and decrees that Garzot and Fuertes purchased with actual notice, as well as constructive notice contained in the registry of property, of the rights and interests of complainant in and to the said property, and of a suit previously instituted by her in the District Court of Humacao to set aside the declaration of dominion hereinbefore referred to.

Deed and sale executed by defendant Santiago R. Palmer to defendant Petronila Rios de Noya on the twenty-first day of November, 1902, for the one hun-

dred acres known as "Islote Quiñones" above described.

The court orders, adjudges and decrees that all of said transfers, and the said mortgages were and are fraudulent and void as against this complainant, as also the inscriptions made respectively thereof in the registry of property of Humacao; and the Registrar of Property of Humacao is ordered forthwith to cancel by proper annotations in the books of his office the said inscriptions and the effect thereof in so far as related to the one-half interest of complainant in and to said properties.

X.

The court orders, adjudges and decrees that complainant Maria Rios is the legal owner of an undivided one-half interest in and to all of the foregoing properties above described, and the registrar of property of Humacao, in which district the said properties are situated, is hereby ordered forthwith to enter in the books of his office the proper inscriptions to that effect.

XI.

It is hereby ordered, adjudged, and decreed that complainant recover all of the costs of this case, including fees or compensation to masters, examiners, and notaries public for the taking of evidence herein.

This final decree was directed by order and opinion delivered in open court on February nineteenth, 1906, to be prepared for submission to the court and counsel; but through the many occupations of the court its consideration was necessarily delayed for final hearing, signing, and entry until this twenty-first day of April, 1906, and it is accordingly ordered and decreed to be dated as of February nineteenth, nineteen hundred and six, when opinion was filed and a decree in favor of complainant was announced and formal order prepared for entry accompanying said opinion recorded on the minutes of court on February nineteenth, 1906.

(Signed) Chas. F. McKenna, *Judge.*

It is to review this decree that appellants bring the case before this court.

ARGUMENT.

It is considered by counsel for the appellee, Maria Rios de Rubio, that under the laws and the rulings of this court governing cases on appeal from the supreme courts of territories of the United States the only questions open for consideration here are:

First. Such as relate to the jurisdiction of this court.

Second. Such as relate to or involve the jurisdiction of the court below.

Third. Does the Findings of Facts support or justify the decree rendered.

Appellants devote considerable space in their brief to questions involving the rulings of the trial court on the admission or rejection of evidence, but as the transcript of record does not contain a statement of any such rulings "made and certified by the court below" (Sec. 2, Act April 7, 1874; 18 Stats., 27) it is conceived that the merits of such questions will not be considered by this court.

Hecht *vs.* Boughton, 105 U. S., 235.
Haws *vs.* Victoria C. M. Co., 160 U. S., 313.
Grayson *vs.* Lynch, 163 U. S., 468, 473.
Apache Co. *vs.* Barth, 177 U. S., 542.
Armijo *vs.* Armijo, 181 U. S., 558, 561.
Herrick *vs.* Boguillas L. and C. Co., 200 U. S., 96, 99.

The appellants also contend that the findings of fact are wholly unsupported by evidence, but this contention also is not open to consideration by this court, for the transcript of record contains no certificate of the lower court indicating or even intimating that it contains *all* the evidence that was given on the trial. In other words, it contains no bill

of exceptions by which such an objection if raised could be tested.

Collier *vs.* United States, 173 U. S., 79.
Herrick *vs.* Boguillas L. & C. Co., *ubi supra.*

This applies as well to the objection and request of defendants made to the court at the conclusion of all the evidence, as to the many objections and requests for rulings made from time to time during the examination of the witnesses.

I.

JURISDICTION

a. Of the Supreme Court of the United States;

b. Of the District Court of the United States for Porto Rico.

a. The jurisdiction of this court to review the decree of the District Court is conceded.

b. The trial court had jurisdiction of the subject-matter and of the parties to the cause.

By section 3 of the act of March 2, 1901 (31 Stats., 953), the jurisdiction of the District Court of the United States for Porto Rico in civil cases was extended so as to "embrace controversies where the parties, or either of them, are citizens or subjects of a foreign State or States, wherein the matter in dispute exceeds, exclusive of interests or costs, the sum or value of one thousand dollars."

It is alleged in the bill of complaint that the complainant Maria, is "a loyal subject of the King of Spain" (R., I. 14).

This allegation as to complainant's nationality was not denied in or by any of the many pleas or answers filed by the

defendants, including those filed by her own sister, Petronila Noya, who no doubt would have quickly detected and called attention to any error of fact in such regard. It consequently is to be taken to have been admitted by the pleadings.

The trial court found as a fact (Finding No. 1) "that the citizenship and residence of the parties are as alleged in the bill of complaint" (R., 586).

This finding was not objected nor excepted to, and in the absence of anything more is binding upon this court.

Garrozi *v.* Dastas, 204 U. S., 64, 74.

No question as to the truth of complainant's allegation in this regard appears to have been raised until some four months after the final decree had been actually recorded and the appeal noted under this court's calendar number 141 had been prayed, allowed, and the requisite appeal bond approved by the court (R., 602), and the appeal numbered 142 had been prayed and allowed (R., 601).

On August 29, 1906, after entry of said final decree, the appellants in case numbered 141 filed a motion to vacate said decree on the ground that the complainant was in fact and law "a citizen of Porto Rico" and had committed a fraud upon the jurisdiction of the trial court by her false allegation "that she was a subject of the King of Spain" (R., 610).

In opposition to such motion the complainant made affidavit, which was not controverted, that she was born in the city and Republic of Mexico, and that on the 9th day of November, 1890, she "married Don Ricardo Rubio, a native of the city of Cordoba, in the Spanish Peninsula;" that her said husband was in Porto Rico, "in the service of the King of Spain," as "the Chief of mail and telegraph of the Peninsula of Spain;" that he "continued in such position until the occupation of Porto Rico by the American troops;" that "her father was a subject of the King of Spain;" that she had lived in Spain during the years 1887 and 1888, and that "it

was her intention always to be and remain subject to the King of Spain and to return to the Peninsula to permanently reside there" (R., 611).

She also produced a certified copy of a declaration of citizenship, dated October 29, 1899, made by her deceased husband before the Municipal Court of Humacao with the view of preserving his allegiance to his Spanish sovereign in accordance with the requirements of the Treaty of Paris between the United States and Spain. This declaration declares the existence of his wife, Maria, and three living children (R., 612).

She also produced the certificate of the vice-consul of Spain at San Juan, certifying that she had "renewed her certificate of citizenship on September 12, 1900, May 28, 1901, April 15, 1902, April 22, 1903, and August 30, 1905" (R., 613).

Also the further certificate of said vice-consul of Spain that in the "Registry of Spaniards, kept at the city of Humacao, there appears registered Don Ricardo Rubio Escobar, of Cordoba, Spain, and Dona Maria Rios de Rubio, of Mexico, which inscriptions were made on the twenty-fourth day of January, nineteen hundred" (R., 614).

Upon consideration of the motion to vacate the decree and complainant's opposition thereto, the court (R., 616) declared that—

> "It is manifest that this woman, the complainant, was in legal contemplation 'a native of the Peninsula' within the meaning of article 9 of the Treaty of Paris, at the time of the ratification thereof." * * * "Her husband did everything he could to preserve, not only his Spanish citizenship, but her's as well." * * * "It would be unreasonable to hold that the treaty did not intend that the wife and children of a Spaniard would follow his citizenship under that article." * * * "The woman was not a born Porto Rican at the date of the treaty. She was a Spaniard, married to a Spaniard, although she was born in Mexico" (R., 617).

No exception to this finding and the refusal of the court, based thereon, to vacate the decree appears to have been taken, but if the conclusion of the lower court should be considered as open to examination by this court, that conclusion must be affirmed.

There can be no doubt of the Spanish nationality of complainant's deceased husband. That he did all that article 9 of the Treaty of Paris required him to do is manifest.

> General Orders 132 of Military Gov't of P. R., issued August 31, 1899; Report of Brig. Gen. Geo. H. Davis, on Civil Affairs of Porto Rico, 1899, G. P. O. 1900, p. 146.
>
> General Orders 164 *ibid.* of October 18, 1899.
>
> Foreign Relations of the United States, 1899, p. 714 *et seq.*

The affidavit of complainant, which is uncontradicted, asserts that although she was born in Mexico, her father "was a subject of the King of Spain."

The Constitution of Spain declares:

> Article 1. The following are Spaniards:
> (1) Persons born in Spanish territory.
> (2) Children of a Spanish father or mother, although born out of Spain.
> See 67, British and Foreign State Papers, 118.

But, if this were not enough, the Civil Code of Spain (Walton's trans., 1899), Book 1, Tit. 1, declares:

> Article 17. The following are Spaniards:
>
> 1. Persons born in Spanish territory.
> 2. Children of a Spanish father or mother, although they may have been born out of Spain.
>
> Article 22. A married woman follows the condition and nationality of her husband.
>
> Article 26. Spaniards who change their domicile to a foreign country, where they may be considered as

natives without other conditions than that of residence in it, in order to preserve their Spanish nationality, shall be required to manifest that such is their will before the Spanish diplomatic or consular agent, who shall inscribe them in the registry of Spanish residents, *as well as their consorts* (spouses), if they are married, and any children which they may have.

H. R. Doc. 326, 59th Cong., 2d session.

Civil Code in force in P. R., War Dept. translation, G. P. O., 1899.

To the suggestion that because of being born in Mexico, although of a Spanish father, she necessarily partook of Mexican nationality it would seem to be sufficient in reply to refer to the Constitution of Mexico, title 1, section II:

Article 30. The following are Mexicans:

1. All those born, within or without the Republic of Mexico, *of Mexican parents.*

Act of the Congress of the Republic of Mexico of May 28, 1886:

Article 1. The following are Mexicans:

1. Those born in the national territory of a father who is a Mexican by birth or by naturalization.

Art. 2. The following are aliens:

1. The children of an alien father, * * * born in the national territory, until they reach the age at which, according to the law of the nationality of the father or of the mother, as the case may be, they become of age. * * *

IV. Mexican women who have married aliens, they retaining their alien character even during widowhood. * * *

H. R. Ex. Doc., No. 326, 59th Cong., 2d session.

See also Van Dyne, Naturalization in U. S., 227 *et seq.*

The general and long-prevailing rule of the continental and Latin countries that the national status of a married woman is fixed by that of her husband, in the present case and in both aspects, is fortified by articles of express law on the statute books of Spain and Mexico.

The Treaty of Paris and the act of April 12, 1900, expressly recognized the right of Spanish subjects residing in Porto Rico at the date of the cession of that island to retain their Spanish nationality. There would seem to be no doubt that complainant's husband in his lifetime, and she herself after his death did all that either was called upon to do in and to that end.

II.

Do the findings of fact support the decree?

The object of the suit was—

(1) To annul the private contract alleged to have been obtained from complainant by fraud and collusion, and which under the law of Porto Rico was legally insufficient to operate as a release or renunciation of the hereditary rights of complainant in the lands involved in the suit.

(2) To declare null and void the *expediente de dominio* and the declaration or registry of title made as a result thereof in favor of complainant's mother because it was the result of fraud and collusion and because the court making the same proceeded without jurisdiction.

(3) To annul the various fraudulent and simulated transfers of the property by complainant's mother and her grantees after the dominion to the property had been declared in her.

The suit is not "in its nature one praying the court below * * * to declare void a judgment of the Supreme

Court of Porto Rico," as said by appellants in their statement. The prayer of the bill does not refer to any judgment of the Supreme Court of Porto Rico. It does seek to have declared void on the ground of fraud and for want of jurisdiction the action of the Porto Rican courts in the so-called *expediente de dominio* proceedings. The final action of such courts in such proceedings never rises to the dignity, nor arrogates to itself the effects, of a final judgment as that word is understood by common-law lawyers. The alleged "judgment" was introduced by way of plea in behalf of defendants. Complainant contends, and the court below held, that it was not a judgment involving merits, but simply a dismissal on technical grounds of the appeal which complainant had prosecuted in the said *expediente de dominio*. It therefore concluded nothing of the merits as against complainant and did not have the force of *res judicata*. The Supreme Court of Porto Rico dismissed the appeal because at that time the said court was a court of cassation, and in accordance with the civil law it distinguished appeals in matters of law from those involving mere errors of procedure.

This distinction is elaborated further on in this brief.

The case below was prepared and tried upon the sole issue of the rights of the complainant in the estate of her deceased brother and upon the issue that she had not lost or been deprived of these rights by reason of the said private contract and of the said "*expediente de dominio*." By the pleadings in the case there is a clear and unequivocal admission upon the part of the defendants that the three children of Manuela's first husband were his sole and only heirs with respect to both the properties in Naguabo and Humacao districts. No claim can be found in any part of this record by the defendants or any of them to the contrary. The controversy which gave rise to the present suit originated only as a result of the death of the son, José Maria Rios, who died in 1887, after the second marriage of Manuela.

Complainant contended that the one-third of the estate of Manuela's first husband, which belonged to the son, had the character of *"bienes reservables"* under the Spanish law.

The doctrine of *"bienes reservables"* in Spanish law means that upon a widow's contracting second nuptials all property acquired by her by *"titulo lucrativo"* (good consideration) from her first husband or from any child had by him shall upon her death pass to and vest in the remaining or surviving children of the first husband. Complainant insisted, therefore, that her mother, Manuela, was entitled only to the usufruct or life estate in the one-third part of her father's estate which was left by her deceased brother. As Manuela had several children by her second husband, she probably endeavored to provide for them an estate or inheritance to which they should succeed upon her death, and therefore it was by the means hereinafter adverted to that she endeavored to convert her usufructuary interest, or life estate in the son's one-third of the paternal inheritance into an absolute title, which upon her death would pass to the children of her second marriage.

The findings of facts, conclusions of law, and decree entered by the trial court rested, in the first place, upon the legal premise that complainant and her sister Petronila were entitled absolutely to the two-thirds part of the paternal inheritance, and that the only issue and controversy in this case related to the undivided one-third interest of complainant's deceased brother. Upon this foundation, therefore, the decree must stand, and upon it we base our brief and argument.

Did the complainant lose her rights as a result of the private contract and the *"expediente de dominio."* If the findings of the trial court support the decree setting aside the private agreement and *"expediente de dominio,"* as well as the fraudulent and simulated transfers made thereafter, an affirmance of that decree will have the effect of establishing in favor of the complainant an undivided one-half interest in the properties in question.

The appellants Garzot and Fuertes contend that, even though the private contract and the *"expediente de dominio"* should be annulled, they are innocent third purchasers from a person in whose name the property which they purchased was inscribed in the Registry of Property. But the appellee insists that the defendants Garzot and Fuertes purchased the property "Cercado, Ramirez," with both constructive and actual notice of the rights and title of complainant in the said property, as well as with knowledge of the fraudulent and collusive nature of the private contract and the *"expediente de dominio."*

Appellee conceives that upon this record the range of the argument is limited to the following points:

(1) Whether at the date of the execution of the private agreement complainant was entitled in law to an undivided one-third of the properties described in the bill of complaint left by her deceased father;

(2) Whether she or her succession was entitled in law to receive at the death of her mother an undivided one-half interest in the share of said properties composing the father's estate which was inherited by her brother, who subsequently died, her mother being entitled, until her death, to the usufruct thereof only;

(3) Whether the private agreement was legally sufficient to effect a renunciation or transfer of complainant's rights;

(4) Whether, even in the absence of fraud, the court was without power under the Mortgage Law of Porto Rico to make the declaration of dominion requested by Manuela, since it appeared from the record that she was not the owner (proprietaria) of the properties, but that her two daughters were the owners thereof, the interest of the widow being only that of heir of her deceased son in his one-third part of his father's estates, and she was entitled to enjoy only in its character of "bienes reservables;"

(5) From the moment that complainant opposed the *expediente de dominio* and presented her claims issues were squarely presented which required for their determination that the *expediente de dominio* should be converted into an ordinary declaratory action. This was not done. The court refused to proceed in the manner provided by the Code of Civil Procedure relating to suits involving its contentious jurisdiction (*jurisdiccion contenciosa*), but proceeded in the summary and *ex parte expediente de dominio* jurisdiction, making a declaration of dominion instead of rendering a judgment (sentencia). The District Court of Humacao refused to permit the appellee here to make the issues which the law required to be made. It arbitrarily held the private agreement to be beyond the field of attack, giving to it the character of *res judicata*. The so-called declaration of dominion rendered in this summary proceeding was null and void.

(6) But even if the declaration or *expediente de dominio* attacked was not void, it cannot serve to support a plea of *res judicata* in this case. Neither it nor the decision of the Supreme Court of Porto Rico, assuming that the latter was a final decision upon the *expediente de dominio*, precludes complainant, because, according to the Spanish law, *expediente de dominio* belongs to the voluntary jurisdiction (jurisdiccion voluntaria) as distinguished from the contentious jurisdiction (jurisdiccion contenciosa) and has not the force of *res judicata*. The record herein discloses that the Supreme Court of Porto Rico considered the appeal before it as one prosecuted from an "*expediente de dominio*" and not one prosecuted from an ordinary declaratory action;

(7) The District Court for Porto Rico having found as a fact that the so-called private agreement, the *expediente de dominio* proceedings, and the subsequent transfers of the various properties were all a part of the original fraudulent

and collusive plan to wrong the complainant, and that under the circumstances none of the grantees sustained the character of innocent purchasers for value, it rightly decreed that said private agreement and the proceedings founded thereon and the specified deeds of transfer should be set aside and held for naught.

By way of elaborating the above considerations, we venture to submit the following suggestions concerning the laws in force in Porto Rico which support and justify the conclusions of law deduced by the learned trial judge and the decree which he passed in the cause.

If in the course of the argument references should be made to documents which were submitted in evidence or to an occasional statement of one or other of the parties defendant, such references are to be taken as being made merely by way of elucidating the point of law under discussion, and not as in any way assenting to the view that in the absence of a bill of exceptions any of such documents or statements, or any other portions of the testimony adduced at the trial is open to the review of or examination and consideration by this court.

III.

THE RIGHTS OF THE WIDOW, MANUELA, UPON THE DEATH OF HER HUSBAND, WITH RESPECT TO—

(a) The husband's estate.

(b) The inheritances of the minor children acquired from their father.

Although we claim that the discussion of the rights of the widow in the husband's property, as well as some intangible claim of compensation urged for services as tutrix or curatrix, are not material to this case, we anticipate that appel-

lants will urge them upon this court in their brief and argument. We therefore submit the following brief statement of the law for the purpose of disposing of such claims should they be considered by this court:

(a) The rights of the widow, as such, in her first husband's estate.

Upon beginning a discussion of the law applicable to the issues of this case, it is not inappropriate to call to the attention of this court the laws in force in Porto Rico at the time in which the various transactions took place.

Prior to 1889 there existed in Porto Rico a body of laws of very ancient origin. These were the various Fueros, the Siete Partidas, the Novisima Recopilacion, and such laws as were enacted subsequent to the Novisima Recopilacion.

The order of preference or application of these various laws was in the inverse order in which they appear above.

In 1889 the first Civil Code was promulgated in Porto Rico.

As both the father and brother of complainant died prior to 1889, the rights of the widow and the surviving children with respect to the estates of the father and brother must therefore be determined by the ancient laws.

The Civil Code of 1889 and the Mortgage Law of 1893 will govern the transactions occurring subsequent to these dates.

By the laws in force in 1875, a widow, in the absence of a testamentary provision, was entitled, first, to her separate estate, if she had any; second, to one-half of the profits of the conjugal society (*gananciales*) after a liquidation of the assets thereof; third, in the absence of either a separate estate or *gananciales*, she would be entitled to the "cuarta marital," or marriage portion. Law 7, title 13, Partida sixth, provided "that the poor widow (having no other resources), who has not sufficient to maintain herself well and honestly, shall

inherit the fourth part of the property of the husband, although there may be children, but no matter how great may be the estate this fourth part shall not exceed 100 pounds of gold."

Alcubilla (Diccionario de la Administracion Espanola), vol. 3, p. 1048, under the title *"Cuarta Marital,"* defines this term to mean "the right which the widow had who was left poor, without dower, legacies or other properties with which to maintain herself, to the fourth part of the property of her deceased husband, with the obligation of setting it aside or reserving it to the children of the first husband, if she should marry a second time." In other words, the *"cuarta marital"* itself had the character of *"bienes reservables."*

This author further defines the *"cuarta marital"* to be in the nature of a portion or allowance (*alimentos*) "to the poor widow of a rich husband."

The term *"alimento"* in Spanish law is defined by the same author (Alcubilla), in vol. 1, p. 446, of the above work to be "all that is indispensable for the sustenance and housing, clothing and medical assistance, according to the social position of the family." It would seem, therefore, that the *"cuarta marital"* was not an interest given by the law to the widow in the real estate, but only an allowance from the usufruct of one-fourth of the deceased husband's estate; but such portion could never exceed the value of 100 pounds of gold.

This allowance of 100 pounds of gold has been frequently determined by the Supreme Court of Spain to equal the sum of 25,676.50 pesetas. (See decision of the Supreme Court of Spain of October 9, 1898, reported in vol. 85, p. 125, of the Reports of the Supreme Court of Spain—Jurisprudencia Civil.)

The observation may not be uninteresting that the peseta is one-fifth of the Spanish peso, and therefore the 25,676.50 pesetas would equal 5,135 Spanish pesos, which, in the money current of the time, would be worth in American gold at the prevailing rate of exchange about $3,807.

Gutierrez, the renowned commentator upon the laws of Spain, in his collection of the codes (codigos), or fundamental studies upon the Spanish civil law, says of the above law of the Partida:

> "The legislator, since he did not concede to the widow a right to the inheritance of her husband, conceded to her as a matter of favor, what in law is called the marital portion (*cuarta marital*), but so little generous was he that he assigns this fourth part in the properties of the husband *only when the widow is completely poor*, and when the husband did not leave her a sufficient amount to live decently, although in such case the fourth part which corresponds to her in this respect shall not exceed 100 pounds of gold," etc.

Vol. 3, p. 680:

> "The *cuarta marital* which law 7, title 13, Partida sixth, concedes to the poor widow of a rich husband in the property of the latter, although there may be children, is in the concept of maintenance (*alimentos*), but this cannot take place if the widow has property of her own with which to live well and decently, by which reason such marital portion is considered a legal debt which must be satisfied out of the property of the husband" (Decisions of the Supreme Court of Spain, October 20, 1860, reported in vol. 5, p. 653, and decision of October 9, 1898, reported in vol. 85, p. 122).

The widow was not a forced heir (heredera forzosa).

According to laws 5 and 6, title 13, Partida sixth, the widow did not inherit unless there were neither ascendants, descendants, brothers, nephews, or other relatives within the 10th degree. See also title 20, book 10, Novisima Recopilacion.

The author, José Morell y Terry, in his studies of the Civil Code (Estudios Sobre El Codigo Civil), says:

> "As if the holy and indissoluble tie which unites man and woman only could have efficacy and produce beneficent results during the life of both; as if upon the breaking of this tie by the death of either there should also disappear all protection, shelter, consideration and affection towards the being who lost her life's companion, our ancient laws contented themselves with assigning to a poor widow the alms of the *'cuarta marital'* and in calling the surviving spouse to inherit only in the absence of all relatives of the husband within the 10th degree in accordance with law 6, title 13, partida sixth, or of collaterials of the 4th degree, according to the law of May 16, 1835."

(b) The rights of the widow, Manuela, upon the death of her husband with respect to the administration of the inheritances of the minor children acquired from their father.

Following the Roman law, for a long period in the legislative history of Spain tutors and guardians were not permitted to receive compensation for their services, but subsequently, by the "Fuero Juzgo," law 3, title 3, book 4, vol. 1, (Muro's Collection of Spanish Codes, p. 72), the compensation of guardians and curators was limited to 10 per cent of the income.

By the law known as "Fuero Real," law 2, title 7, book 3 (Muro's Collection of Spanish Codes, vol. 2, p. 78), it was further provided: "The tutor, whoever he may be, either the mother or brother, shall support the minor with the products of the property, and shall take for himself 10 per cent of such products in compensation for such services." The tutor of Spanish law exercised the duties and functions of the guardian known to the American and English law.

The former legislation fixing the compensation of the tutor

at 10 per cent of the income was carried into the Civil Code of 1889.

> "The tutor has the right to receive remuneration from the property of a minor or of a person under disability. * * * In no case shall this remuneration be less than 4 nor exceed 10 per cent of the net rents or products of the estates" (article 276, Spanish Civil Code, 1889).

By the ancient law as well as by the modern code, the guardianship or curatorship exercised by the widow over the minor children of her deceased husband terminated upon her marrying a second time.

> "Upon the death of the father leaving minor children, the mother on marrying, will take charge of them, if she so desires, and will have them in her custody until they arrive at the age of majority, receiving their properties by inventory before the alcalde (mayor of the town), and the nearest relatives of the deceased. *If the mother marries the guardianship ceases,* and the alcalde, together with said relatives, will deliver the said minors and their property to a person who may be commissioned by the former." * * * Law 3, title 7, book 3, "Fuero Real" (Muro's Collection of Spanish Codes, vol. 2, p. 78).

The will which the widow made in behalf of her husband contains an express recognition upon her part that she was entitled only to the compensation allowed by law. In the power executed by the husband, authorizing her to execute the will, he appointed his said wife tutrix and curatrix of the persons and properties of their three children, "relieving her from bond, the pension (*alimentos*) to be paid in products" (Transcript of Record, p. 76; also 2d clause of the will—p. 77, Transcipt of Record).

The pension, or *alimentos*, referred to here consisted of the 10 per cent of the rent and products of the minor's estate allowed by the law then in force to curators and guardians.

IV.

THE RESPECTIVE RIGHTS OF THE WIDOW AND SURVIVING CHILDREN OF FIRST HUSBAND TO HIS ESTATE AND TO THAT OF HIS DECEASED SON—THE LAW OF "BIENES RESERVABLES."

This point presents the real issue of this case. The controversy between the widow and her daughters and the subsequent litigation resulting therefrom all arose out of the claims of the respective parties to the estate left upon the death of the brother of the complainant. The principle or doctrine of *"bienes reservables"* is peculiar to the Spanish law. According to the Spanish law, all property acquired by a widow from her deceased husband by devise, gift, legacy, donation, or in any other manner, for a good consideration (*"titulo lucrativo"*), vests in the children of the first husband upon the widow contracting second nuptials. The doctrine of *"bienes reservables"* owes its origin to the purpose of the Spanish law to secure to the surviving children resulting from first nuptials the estate left by their father or by any of his children. It applies to all property of the first husband or of his children except that acquired by the widow from either of them by virtue of *"titulo oneroso"* (valuable consideration).

According to the law in force in Porto Rico at the time of the death of the son, José Maria Bizs, his mother inherited all of his estate in the absence of issue by him or of a will making a different disposition of his property; but the estate of the son acquired by the mother as his heir vested in the surviving children of the first marriage in the event of the widow contracting second nuptials. As she had contracted second nuptials prior to the death of her son, she acquired under the law only a life estate in the property which he had

inherited from his father. She was entitled to the usufruct and enjoyment thereof until her death, upon which event the dominion and ownership vested absolutely in the surviving children of the first husband.

The doctrine of *"bienes reservables"* and the interest of the widow, under the circumstances above stated, corresponds to the doctrine of remainders known to the English and American law. Having in mind the American and English law, it may be said that his surviving sisters had a vested remainder, in his estate, because at that time the widow had already contracted second nuptials. Had he died before the contracting of second nuptials by his mother, his surviving sisters would have had a contingent remainder, conditioned upon the mother's subsequently marrying.

According to law 7, title 4, book 10, of the Novisima Recopilacion, which was in force in Porto Rico at the time of the death of the son, it was provided:

> "In all cases where women marrying a second time, are obliged to reserve to the children of the first marriage the property of the first husband, or the property which they may have inherited from the first husband, or which they may have inherited from the children of the first marriage; in like manner, if the husband should marry a second time or a third time, he will be obliged to reserve the property acquired from the first wife for her children, so that what is established with respect to the case of women who marry a second time shall also apply to husbands who marry a second or third time."

Alcubilla ("Diccionario de Administracion"), vol. 2, p. 167, under the title of *"Bienes Reservables,"* defines the same as follows:

> "When a widower or widow marries a second time, if they should have children by the first marriage, there will be reserved or set apart for the latter all the property which the surviving spouse may have ac-

quired by good consideration, (*'titulo lucrativo'*), such as wedding gifts, donations, legacies or inheritance, the father or the mother surviving enjoying during his or her life the usufruct of such property, whilst the dominion or fee-simple title (*nuda propiedad*) corresponds to the children of the first marriage upon the surviving spouse contracting second nuptials."

In the original Spanish text of this definition the word "usufruct" is represented by the Spanish word *"vitaliciamente,"* which is derived from the substantive *"vitalicio,"* which is defined in Escriche's Legal Dictionary of Spanish Terms to be "that which lasts but for the time of a life, such as pensions, rents, etc."

The Supreme Court of Spain, in its decision of May 21, 1861, reported in vol. 6, page 382, has decided that the surviving spouse who contracts second nuptials is obliged to set aside for the surviving children of the first marriage the property which he or she may have inherited from the deceased spouse or from his children; that by operation of law there is transferred to the children of the first marriage the title or dominion from the moment that the surviving spouse contracts second nuptials, and as the latter retains only the usufruct until his death, the transfer of such properties (*"bienes reservables"*) made by him after such marriage is not valid and can be sustained only during his life.

The court further holds in this decision that the sale of a thing belonging to another without the consent of its owner is not valid, and that as the children of the first marriage could not bring an action until the death of the surviving spouse with respect to the *"bienes reservables"* transferred by him, prescription is computed only from the death of the latter. It further holds that as the children of the first marriage acquired by the death of the surviving spouse the full dominion in the *"bienes reservables,"* or property left by the deceased spouse or child, they acquire thereafter the actions and rights inherent to the same, and they can from that

moment exercise them against the possessor of such properties.

In the decision of the Supreme Court of Spain of June 16, 1862, reported in vol. 7, p. 406, it was decided that the obligation of a surviving spouse to reserve for the surviving children of the first marriage the property acquired from the deceased spouse or any of his children is intimately united to the prohibition of transferring the same, and in such case the cancellaton of a mortgage made by the surviving spouse in prejudice of the children of the first marriage was annulled, it appearing that the surviving spouse had contracted second nuptials.

In the decision of the Supreme Court of Spain of June 18, 1864, reported in vol. 29, p. 189, the court held that the obligation to reserve the *"bienes reservables"* attaches to all the properties of the deceased spouse, or child of the first marriage, without regard to the period of time in which they might have been acquired, since from the very fact of their origin they are submitted to the charge of being reserved or set apart for the children of the first marriage; and that upon the second nuptials of the surviving spouse all of the said properties are set apart or reserved by operation of law for the children of the first marriage, who from the very instant of second marriage acquired the full dominion and title thereto.

The court further held in this case that as a necessary consequence of the preceding doctrine and in accordance with the constant jurisprudence of the courts of Spain, particularly of the Supreme Court, transfers of real property which are subject to be reserved or set apart as *"bienes reservables,"* which are made by the surviving spouse before or after his second nuptials, can be effective and subsist only in the event that at the death of the latter there should not remain any children of the first marriage.

There appears to be some confusion in the decisions of the Supreme Court of Spain as to the title of the widow after

contracting second nuptials. After a careful consideration of all of the decisions and of the works of the civil-law authors upon this subject, counsel for appellee are of the opinion that the absolute title or dominion to the properties does not vest in the children of the first marriage immediately upon the contracting of second nuptials by the surviving spouse, but that the latter has the dominion and title to the property until her death. If upon her death there be not surviving any children of the first marriage, then the property so acquired by the surviving spouse would descend to her heirs or could be transferred or devised by her. If the children of the first marriage survived her, then by operation of law the dominion or title to the property acquired by her, as aforesaid, from her first husband or from a child of the first husband would immediately vest in the surviving children of the first husband.

This we consider to be the true rule of law upon the subject.

Yet the Supreme Court of Spain in its decision of June 18, 1880, recorded in vol. 43, p. 725, has held that where the purchaser knew that the seller was administering property acquired from his deceased spouse, and therefore that the latter had but the right of usufruct thereto, without the power to sell them in any specific operation such sale could not transmit any rights nor even serve for the purpose of prescription, notwithstanding that by the registry of property the right to make such a deed seemed to be established and although such a deed was admitted to record; and in this case the court further held that the title of the property passed immediately to the children of the first marriage upon the contracting of second nuptials by the surviving spouse, and that the latter retained only the usufruct of the property until her death.

Scaevola, the eminent commentator of the Spanish Civil Code (vol. 17, p. 246), says:

> "The general principle, according to which, by the celebration of second nuptials, the surviving spouse

loses the title to the property of her former husband, retaining only the usufruct thereof, is as ancient as the doctrine of reserved property ('*bienes reservables*') and is found expressed in numerous legal texts."

Don Jose Morell y Terry, in his Studies of the Civil Code, (Estudios Sobre el Codigo Civil), heretofore cited, page 245, says:

"The widow is not merely entitled to the usufruct. The right of the children to the '*bienes reservables*' is not a right of absolute dominion (*nuda propiedad*). Certainly the widow is entitled to the usufruct of such '*bienes reservables,*' but she has further rights than those of using and enjoying the same for her own use, since she may dispose of the same and may sue to recover them. The children, on the other hand, cannot dispose of nor sue for them, all of which proves that their rights are not perfectly clear and well-defined ones of dominion title. Their rights are only eventual, which may or may not become certain, according to the circumstances. There are two conditions in the law which limit the dominion of the '*bienes reservables*'—conditions and limitations which are established in favor of the children, by reason of which it may be affirmed that the widow's rights are subject to a '*condicion resolutoria*' (contingency). This contingency is the contracting of second nuptials."

The Civil Code of 1889, modifies the law, as we understand it, by validating only transfers of personal property which may be made by the surviving spouse *after* second nuptials; but as to real estate having the character of "*bienes reservables,*" any transfer of the surviving spouse *after* contracting second nuptials is absolutely null and void. (See pp. 249, 250, 264, 265 of the Studies of the Civil Code, by Jose Morell y Terry.)

Section 974 of the Civil Code of 1889 provides that transfers of real estate having the character of "*bienes reservables*" made by the surviving spouse before contracting second nup-

tials shall be valid, but there shall exist in such case the obligation upon her part to secure to the children of the first marriage the value of the same.

According to section 968 of the Civil Code of 1889, the surviving spouse who contracts second nuptials is obliged to reserve or set apart to the children and descendants of the first husband the dominion and title of all property which he may have acquired from the deceased spouse by will, by intestate succession, donation, or for any other good consideration (*título lucrativo*), but this shall not apply to the one-half of the "*gananciales*" to which such surviving spouse might be entitled in the event of the existence of the same.

Article 811 of the Civil Code of 1889 provided:

> "The ascendant who inherits property from his descendant, acquired by the latter for a good consideration ('*título lucrativo*') from another descendant, or from a brother or sister, is obliged, by operation of law, to reserve in favor of the relatives within the third decree belonging to the line from which such property originated."

"*Título lucrativo*" is defined in the Spanish Law Dictionary of Escriche to be the mode by which we acquire a thing which does not cost us anything, as a gift or legacy.

See also articles 968, 975, and 978 of the same Code.

V.

The private contract executed in January, 1901, was illegal and void and was legally ineffectual to transfer, or to serve as a basis for the transfer, of the rights of complainant in the property in question.

The legal effect of this document must be determined by the provisions of the Civil Code of 1889.

Article 1280 of that Code, subdivision 4, provides that the assignment, repudiation, and renunciation of hereditary

rights or of those of the conjugal partnership must be made by a public document.

> "Public documents are those executed before a notary or competent public officer, with the solemnities required by law."
>
> Article 1216 of the Civil Code.

> "Under the designation of public and solemn documents are comprehended—
>
> "1st. Public deeds executed in accordance with the law.
>
> "2nd. The certificates issued by brokers and exchange agents of commerce with respect to the registry book of their respective operations, in the terms and with the solemnities which are prescribed by article 64 of the Code of Commerce.
>
> "3rd. Documents issued by public officials thereunto authorized concerning their respective functions.
>
> "4th. Books containing minutes, by-laws, ordinances, registries and other documents which are found in public archives or dependencies of the State, of the provinces or of the towns, and the copies of the same certified by the secretaries and keepers of the archives by order of the competent authority.
>
> "5th. The ordinances, by-laws and regulations of companies, communities or associations, provided that they are approved by public authority, and the certified copies thereof in the form provided for in the preceding subdivision.
>
> "6th. The certificates of birth, matrimony and of death taken from the books of the parish priests or delivered by those persons who have charge of the civil registry.
>
> "7th. Executions and judicial proceedings of all kinds."
>
> Article 595, Code of Civil Procedure of Porto Rico of 1886.

Article 1271 of the Civil Code provides that all things may be the object of a contract which are not without the range of commerce among men, but with respect to "future

inheritances, no contract can be made except those which have for their object to effect, *inter vivos*, the division of an estate in accordance with article 1056."

The interest or title of complainant in the estate of her deceased brother was a "future inheritance," and therefore was comprehended in the above article of the Code.

> "The repudiation of an inheritance must be made in a public or authentic instrument, or by a writing presented to a judge of competent jurisdiction in testamentary or intestate proceedings."
>
> Article 1008 of the Civil Code.

> "The assignment, repudiation and renunciation of hereditary rights or those of a conjugal society must be by deed, above all, because without the publicity of a public title third persons and creditors might be prejudiced; and further because an hereditary right is rather real property than personal, and finally because the assignment of rights acquired by titles as solemn as that of a testament or from a declaration of heirship sustains intimate analogies with the cases provided for in No. 6 of the article under comment."
>
> See Scaevolo, Commentaries on the Civil Code of Spain, vol. 20, p. 18.
>
> See also p. 811 of the same volume.

There is no contract unless the following requisites exist:

(1) The consent of the contracting parties.

(2) A definite object which may be the subject of the contract.

(3) A consideration for the obligation which is created.

Article 1261 of the Civil Code.

Consent given by error, under compulsion or violence, by intimidation or deceit, shall be void.

Article 1265 of the Civil Code.

There is deceit when by words or insidious machinations on the part of one of the contracting parties the other is in-

duced to execute a contract, which without them he would not have made.

Article 1269 of the Civil Code.

Article 1225 of the Civil Code has been relied upon by appellants to sustain the validity of the private contract, but this article must be read and construed in connection with articles 1008 and 1280, above cited.

Upon the trial below appellants sought to sustain the validity of the private contract upon the theory of its being a compromise under the terms of article 1809 of the Code, which reads as follows:

> "A compromise (transaccion) is a contract by which the parties by giving, promising or retaining, each one something, avoid the institution of a suit, or by which they put an end to one which has already begun."

But, according to article 1817, a compromise effected as result of error, deceit, violence, or falsity of documents is subject to the provisions of article 1265, above cited, which invalidates all contracts where the consent was obtained by such error, violence, intimidation, or deceit. But, in addition to this, the contract in question cannot be so sustained as a compromise under article 1809 and the following for the reason that it was subject to the fatal defects of not having been made in the form of a public document, as well as because it was obtained by deceit and fraud.

The Supreme Court of Spain has upon various occasions recognized and ratified the doctrine that rights of the character to which complainant was entitled could not be transmitted or assigned by a private contract.

See the following decisions: July 8, 1874, June 22, 1895, and February 1, 1900.

See also resolutions of the Board of Registrars of July 25, 1892.

Appellants in the court below invoked the general principles of American law to sustain the private contract and directed their arguments and briefs to demonstrate that it should be sustained as a "family settlement."

We do not think that the principles of American law should be applied in this case. This court has upon numerous occasions held that contracts and obligations arising in Porto Rico must be determined and interpreted by the laws there in force.

But, were the American law to be applied, appellee insists that under the evidence in this case the trial court, sitting as a court of equity, could not have sustained the document.

VI.

The expediente de dominio and the proceedings conducted in connection therewith were null and void and ineffectual to deprive complainant of her interest and title to the lands in question, as they were the result of fraud and collusion; they were not authorized by law, and they were in excess of the jurisdiction of the court. For these reasons they cannot be effectually pleaded as res judicata.

The *expediente de dominio* is a peculiar feature of the Mortgage Law of Spain. Article 395 of the Mortgage Law, promulgated in Porto Rico in 1893, provides:

> "Every proprietor who lacks a written title of dominion, whatever may be the time in which it may have been acquired, can inscribe such dominion upon establishing the same with the following formalities."

These formalities consisted in the presentation to a Court of First Instance, in the district in which the property is situated, a petition setting forth the manner in which the

property was acquired, as well as the legal proofs to be offered to justify such acquisition, praying that the party from whom the said property was acquired or his successors be cited, as well as the prosecuting attorney (ministerio fiscal). There shall also be cited all interested persons who may have any interest or claim to the property. This citation is by means of notices posted in public places and published in the official newspaper of the province. The court then hears the proofs in support of the claim of the person instituting such proceedings as well as those opposing the same. There is no trial of the issue of title. It is in no sense a final judgment. The court is simply limited to declaring if the dominion of the property in question has been satisfactorily established for the purposes of its inscription in the registry of property. The purpose of the proceedings is simply to create a *prima facie* muniment or evidence of title.

Subdivision 5 of the said article 395 provides "that in the event of an appeal from the order declaring the dominion in favor of the petitioner and its being approved or affirmed, 'it will be in such case sufficient title for the *inscription* of the dominion.' "

The proceeding is based upon the assumption that the applicant is the owner (*propietario*) of the property, and the purpose is only to have his claim of ownership recorded. The Mortgage Law contains another peculiar proceeding, namely, the "*expediente posesorio*" for the purpose of having the fact of one's possession recorded in the registry. (See Articles 390, 391, 392 of the Mortgage Law.)

Both of these proceedings are analagous, and it will be observed from the articles relating to the *expediente posesorio* what the real character and effect of such proceedings are.

In the 5th subdivision of paragraph 391 it is provided that after carrying on the proceedings therein described the judge will approve the *expediente posesorio* and order the inscription of the right of possession prayed for *without prejudice to those having a better right.* The inscription in the registry must contain this statement.

In article 392 it is provided:

> "Should the notice drawn in accordance with the form prescribed in the preceding article be sufficient and there be no opposition by a person having a right thereto, or such opposition as was made having been abandoned, the court shall approve the proceedings and order that the request be made in the registry *without prejudice to a third person having a better claim.*"

The jurisdiction of the District of Humacao in this summary and *ex parte* proceeding was limited simply to an order authorizing the inscription of the dominion in the registry property in favor of Manuela, the petitioner.

To demonstrate that the "expediente de dominio" could not result in an *adjudication* of title in favor of the petitioner, we call attention to the second paragraph of article 396 of the Mortgage Law, in which provision is made for attacking the inscription of the dominion in the registry by the real owner by separate *judicial* proceedings.

Article 33 of the Mortgage Law provides "that the inscription of instruments or contracts which are null in accordance with the law are not validated thereby."

The term *"expediente"* is defined in the Spanish Law Dictionary of Escriche, vol. 2, p. 936, "as a matter pending in the courts at the request of an interested party or *ex officio* without any controversy."

Appellee insists that the *"expediente de dominio"* was illegal and void, first, because it was a part of and the result of the collusion and fraud of Manuela and of her sister, Petronila, and their advisers combining and colluding with complainant' attorney, Cuadra.

As demonstrating the fraudulent character of the *"expediente de dominio,"* attention is called to the fact that in the petition presented by Cuadra, apparently as attorney for complainant, the following false statements were made, un-

doubtedly for the purpose of deceiving the court and to enable Manuela to avoid any issue in the proceedings.

The petition first recites that "Dona Manuela Gutman, widow of Bustelo, is the only owner, *without dispute of anybody,* of the following properties" (page 172, Transcript of Record).

Here follows a list of the Naguabo properties involved in this suit.

In the second place, the said petition recites:

> "All the foregoing properties have been recently acquired by title of private settlement made with the daughters of her first marriage, named Dona Manuela Rios y Gutman, widow of Rubio; Dona Petronila Patricia Rios y Gutman, with the *consented* intervention of her husband, Don Francisco Noya y Frias, who acquired the same through testate inheritance from their legitimate father, the deceased Don José Rios y Berrios. They are free from charges and incumbrances, *without written title of dominion.*"

Again, the said petition recites:

> "The sisters, Dona Maria and Dona Petronila Patricia Rios y Gutman, are owners in an undivided one-half, with the exclusion of any persons and without dispute of anybody, of the following properties."

Here follows a list of properties, consisting of "Las Mulas" and the other properties which were inherited directly by the two sisters from their paternal grandmother, all being in the Humacao District. (See p. 174, Transcript of Record.)

This same cunningly prepared petition contains the further recital:

> "The foregoing properties belonging to the Dona Maria and Dona Patronila Patricia Rios y Gutman were recently acquired, also through title of private settlement celebrated between them and their mother.

> Dona Manuela Gutman, widow of Bustelo, as forming the succession of their ancestor, Don José Rios y Berrios, from whom they had these properties through testate inheritance; said properties are free from all charges and incumbrances and their present owners in undivided interest lack a written title of dominion inscribed."

Aside from being an unequivocal admission upon the part of Manuela that she based her claim to the properties in question by virtue exclusively of the private agreement, and that previous thereto she had no right to or interest in the same in her capacity as widow of her deceased husband, Rios, this petition rested upon and was a part of the fraudulent scheme to deprive complainant of her interests in the property in question. In order to comply with the Mortgage Law and to place Manuela in the light of an undisputed and recognized owner (*propietario*), the lawyer of Manuela made to the court the representations just referred to. These were false, and from the petition and the records offered in support thereof it appeared that Manuela was seeking to acquire an absolute dominion title to the properties of her two daughters inherited from their brother and in which she then had a life interest. This fact was emphatically developed upon the filing of the petition of opposition by complainant.

From this moment we contend that the court was without jurisdiction to proceed further and to make "a declaration of dominion."

Inasmuch as there was involved before the court the claim of complainant to the hereditary rights acquired from her brother, and which could not under the law have been renounced or assigned by a private document, the court was powerless to carry the "expediente de dominio" to a finality.

According to the Code of Civil Procedure then in force in Porto Rico, the jurisdiction of the local courts was divided into voluntary jurisdiction (*jurisdiccion voluntaria*) and con-

tentious jurisdiction (*jurisdiccion contenciosa*). The latter involved ordinary suits in which issues are presented for determination. Voluntary jurisdiction is defined in article 1810 of the Code of Civil Procedure of Porto Rico as "all proceedings in which the intervention of the judge is requested or is necessary, without there being actual litigation, or in which no question is raised between known and determined parties."

Article 1816 of the Civil Procedure of Porto Rico, then in force, under the chapter relating to the voluntary jurisdiction of courts, to which category belong the "expediente de dominio," provides:

> "If opposition to the request (petition) should be made by any person having an interest in the matter, the proceedings shall be of contentious jurisdiction, without altering the situation of the parties at the time of the institution of the proceedings, nor the subject-matter thereof, and it shall be subject to the procedure prescribed for the proper action, according to the amount involved."

From the moment in which there is opposition in acts of voluntary jurisdiction, they become contentious and subject to the procedure prescribed for their proper action.

> Decisions of the Supreme Court of Spain, February 20, 1872.

Counsel for appellants contend that it was not necessary to institute a new suit, and that the "expediente de dominio" should be converted then and there into a regular suit at law. Let it be granted, but according to the Code of Procedure and the decisions of the Supreme Court of Spain, the conduct of the case from that moment and the procedure to be observed with respect thereto was that applicable to the ordinary actions.

Counsel for appellee say that there was an absolute disregard of the provisions of the law relating to the trials of ordi-

nary actions, and that upon the face of the record itself the proceedings purported to be a continuation of the "expediente de dominio" and not an ordinary action.

All references made subsequent to the raising of the issue are those relating to "expediente de dominio" and not those relating to the terms or procedure of ordinary actions.

The order entered by the court on the 16th of November, 1901, is the usual declaration of dominion and does not purport or pretend to be in form of a judgment or "sentencia," which put an end to ordinary actions. It does not comply with article 371 of the Code of Civil Procedure, which determined the manner in which final judgments in ordinary actions should be drafted. This is the only kind of a judgment which has the character of final and will avail as *res judicata*.

Furthermore, we contend that the proceedings prior to the entering up of this pretended declaration are absolutely null and void and beyond the jurisdiction of the court. The issues made and presented by complainant upon the filing of her opposition in the "expediente de dominio" would have given to the controversy the character of a declaratory action (*juicio declarativo*).

> "All contentions at law between parties for which no special pleadings are provided in this law shall be heard and decided in a proper ordinary declaratory action."
>
> Article 480, Code of Civil Procedure.

The purpose of it would have been to annul or rescind the private contract, and it would have belonged to that class of actions known as "mayor cuantia" (declaratory actions of greater import).

> "When the parties do not come to an agreement with regard to the class of actions to be adopted, the judge shall determine the same."
>
> Article 493, Code of Civil Procedure.

Articles 502 to 522, inclusive, regulate the presentation of documents to be used. Articles 523 to 530, inclusive, relate to the manner of filing the complaint and the summons to the defendants. Articles 531 to 538, inclusive, relate to dilatory exceptions. Articles 539 to 548, inclusive, relate to answers, counter-claims, replications, and rejoinders. Articles 549 to 576, inclusive, relate to the admission of evidence, etc.

The record of the dominion proceedings offered in evidence in this case discloses that complainant was denied the rights to which she was entitled under the Code of Civil Procedure for the trial of the issues raised by her in a due and orderly manner.

If the dominion proceedings were, as counsel for appellants contend, converted into contentious proceedings, or into regular action at law, there was a most lamentable disregard by the Humacao court of the law. It proceeded without jurisdiction.

Notwithstanding that complainant by her opposition to the "expediente de dominio" presented an issue which involved the contentious jurisdiction of the court, the latter refused to consider the same, and the proceedings were carried on to the end as an "expediente de dominio" under the voluntary jurisdiction of the court. This is evident from the opinion of the Supreme Court of Porto Rico.

The beginning of this opinion is as follows (p. 37 of Transcript of Record):

> "In the city of San Juan, Porto Rico, on the 4th day of June, 1902, *in the ex parte proceedings* instituted in the District Court of Humacao by Dona Manuela Gutman, widow of Bustelo, and her daughters, Dona Maria and Dona Petronila Patricia y Gutman, to prove the dominion of several rural estates, the same pending before us by virtue of an appeal of cassation for violation of law, taken by Dona Maria Rios y Gutman, represented by the lawyer, Don Juan F. Vias," etc.

This opinion was rendered, therefore, in the *ex parte* dominion proceedings and not in an ordinary declaratory action, into which the "expediente de dominio" should have been converted upon the filing of the petition of opposition by complainant. The declaration of dominion entered by the District Court of Humacao shows that that court refused to consider the issue made by complainant and declined to convert the "expediente de dominio" into a declaratory action involving the contentious jurisdiction. The District Court of Humacao arbitrarily assumed that the private contract of January 16, 1901, was an obligation executed by complainant, having the "authority of *res judicata*, as is established by articles 1809 and 1816 of the Civil Code" (pp. 192 and 193 of Transcript of Record).

Complainant was denied the right to litigate as to the invalidity of the private contract, which the District Court of Humacao arbitrarily held to be binding upon her and as having the force of *res judicata*.

Counsel for appellants seem to have overlooked this point, and therefore the argument as to the conclusive character of the declaration in the "expediente de dominio" is not sound.

In the document filed by complainant in the "expediente de dominio" by her lawyer, Vias Ochoteca (p. 177 of Transcript of Record), opposing the declaration of dominion as prayed, a clear and forcible issue was made. This recited, among other things, "that with great surprise and in spite of instructions to the contrary, which had been given by my client to her old attorney, Don José Cuadra y Rosa, this gentleman, together with his brother lawyer, Don Rafael Lopez Landron, have instituted the proceedings which appeared, setting forth the settlement (private contract) as the title of the acquisition of the properties adjudicated to Dona Manuela Gutman in the settlement made by this lady with her daughters of the first marriage for the partition of the properties left upon the death of Don. José Maria Rios y Berrios, the husband of the said lady."

This document further recites that what is involved in these proceedings are hereditary rights, and that it is absolutely necessary to determine with the greatest precision possible the legal character with which said properties are *acquired,* so that in the future there might clearly appear described the rights which might be exercised by the heirs. It sets forth the claim of complainant to the estate of her deceased brother on the theory of "bienes reservables." It charges Manuela with a deliberate design of holding the property for twenty-five years and delaying the settlement of the testamentary proceedings for her own benefit. It insists that complainant entered into the private contract upon the understanding that these properties should retain their character as "bienes reservables." It charges Manuela and the lawyers, Landron and Cuadra, with the purpose of deceiving complainant and lacking the means of convincing Dona Maria Rios, who had given up in regard to her wishes of requiring an accounting from her former curator, and having acceded that notwithstanding the responsibilities incurred by her, there might be adjudicated to her a portion equal to the inheritance, the said lawyers wanted to resolve in any way the conflict in which they found themselves, and conceived the idea, with very little fortune, by the way, of instituting proceedings to establish a dominion title, setting forth at title of acquisition of Dona Manuela Gutman, not an hereditary one, which really is the one that ought to have been invoked, but simply and plainly an agreement of settlement, which leaves concealed in the darkness the rights which in the future might be exercised by the daughters of the first marriage of said lady against the children of her second marriage, without any benefit to any of the parties interested, and sowing the seeds of a suit for the day when the death of the said Manuela Gutman should come. The most essential thing for Senor Cuadra, the former lawyer of Dona Manuela Rios, was to earn fees, and in these same proceedings and in the testamentary proceedings of Don José

Maria Rios, his object is clearly perceived, which was nothing but to collect the sum of $3,000 for such an upright, laborious, and commendable work (p. 179, Transcript of Record).

In conclusion, this document contained the following prayer:

> "By virtue of the aforesaid, I pray the court that having this motion presented and considering me as a party in behalf of her whom I represent, may at the end approve these proceedings of dominion, *making the express declaration that the* properties acquired by Dona Manuela Gutman have been with the character of an heir *ab intestato*, of her son by her first husband, Don José Rios y Gutman, and that those belonging to my client and to Dona Petronila came from the estate of their deceased father, Don Jose Rios y Berrios, and in the event that the court should not see fit *to make this order to deny absolutely its approval because of its not being expressed in the petition for the institution of the proceedings, the true title of acquisition of the properties adjudicated to said Dona Manuela, all in accordance with justice,*" etc. (Italics are ours.)

Counsel for appellants have urged that the private agreement was not attacked, nor was any fraud or misconduct charged by complainant against Manuela and the two lawyers in this document of opposition. It would seem that, even by the strict rules of American pleading, a very clear case of fraud was laid at the doors of Manuela and the two lawyers. Certainly by the Spanish system of pleading in force at the time the charge was sufficient.

If a court or tribunal pronounce a judgment which it has no authority to grant, or one outside of the issues before the court for determination, such a judgment in excess of the power conferred is void.

Brown on Jurisdiction, sec. 3.

Jurisdiction may be defined to be the right to adjudicate concerning the subject-matter in a given case. To constitute this, there are three essentials:

(1) The court must have cognizance of the class of cases to which the one to be adjudged belongs.

(2) The proper parties must be present.

(3) The point decided must be in substance and effect within the issue.

Munday *vs.* Vale, 34 N. J. Law Repts., 422.

In Windsor *vs.* McVeigh, 93 U. S., 283, it is said:

> "It is not within the power of the jurisdiction of the District Court to proceed with the case so as to affect the rights of the owner after his appearance has been stricken out and the benefit of the citation to him thus denied; for jurisdiction is the right to hear and determine, not to determine without hearing. The judgment of a court which awards an amount in excess of its jurisdiction is void."
>
> Feillett *vs.* Englar, 8 Cal., 76.

The Defense of Res Judicata.

Neither the declaration in the "expediente de dominio" nor the opinion of the Supreme Court of Porto Rico dismissing the appeal therefrom, nor any other judicial proceedings offered in evidence below can be set up as *res judicata* herein.

Before passing to a discussion of the claims of appellants with respect to the declaration in the "expediente de dominio" and the opinion of the Supreme Court, counsel for appellee desire to correct an error upon the part of counsel for appellants due to a confusion existing in the record.

We have been furnished with the proof-sheets of the brief of appellants. Reference is made therein to the plea of *res judicata* set up below by the defendant Petronila Rios (Transcript of Record, p. 22).

This plea sets forth that at a term of the Insular District Court of Humacao and on the 10th of December, 1901, complainant exhibited her complaint in that court against the said Petronila Rios and against Manuela Gutman for the annulment of the private contract made between said parties on January 16, 1901, and further praying for the annulment of the title of dominion obtained by the said Manuela Gutman as the result thereof.

The plea recited further:

> "And this defendant appeared and put in her answer to the said former complaint and has proceeded to final decree in favor of this defendant in said former cause in the said Insular District Court of Humacao, the filing of complainant's present bill in this court and the said private contracts and deeds, the acts and proceedings of the parties there made have been decided and decreed to be valid and binding upon the said complainant, *as will more fully appear from a certified copy of the said proceedings in the Spanish language, with a true translation thereof, herewith filed and made a part of the plea.*"

As stated by counsel for appellants in their brief, the record does not show attached to said plea any such decision or judgment, but rather a copy of the declaration of dominion. Counsel for appellants attribute this to an error of the clerk below in the preparation of the transcript.

This plea is based upon an erroneous conception of facts and the attorney who filed the same was confused. As a matter of fact, the petition referred to in the plea as having been filed by the complainant in the District Court of Humacao on the 10th of December, 1901, is the same petition which appears in evidence as Complainant's Exhibit "M" (p. 509, Transcript of Record).

On page 509 there appears a file-mark of July 11, 1905. This file-mark refers to the date on which this exhibit was filed in the District Court of the United States for Porto Rico for use in the trial below.

At the termination of the body of this petition, which is found on page 514, Transcript of Record, it will be seen that the date of the presentation thereof was the 10th day of December, 1901. This plea was formerly set down for argument, together with the pleas filed by the other defendants. (See p. 45, Transcript of Record.)

Counsel for appellants will certainly not claim that any decision or judgment was rendered by the District Court of Humacao upon the said petition of the 10th of December, 1901. Upon the filing of the bill of complaint in this case, all parties abandoned any further proceedings in the District Court of Humacao and submitted their controversy to this court without any judgment or decree having been entered or rendered in the Humacao court. For that reason and because of the error committed by the attorney for the defendant Petronila in his said plea, it was by the court overruled, together with the pleas of the other defendants (p. 53, Transcript of Record). If counsel for appellants insist upon the benefit of the erroneous allegations of this plea, we submit to the court that, although by setting the plea down for argument only issues of law were submitted, still upon the allegations of the bill and in view of the answers filed by the said defendant, Petronila Rios, in support of the said plea, the result of the court's action was to have considered the plea as either abandoned because of the mistake therein, or else to have treated it as put at issue and to have determined the same against said defendant. It is important that this court be not left in doubt as to the non-existence of any such judgment.

And now with respect to the decision of the Supreme Court of Porto Rico.

Articles 1687 to 1771, inclusive, of the Code of Civil Procedure of Porto Rico regulate appeals by way of cassation for both errors of law and errors of procedure.

The Supreme Court of Porto Rico did not lose its character

as a court of cassation and become one of appeals until March 12, 1903.

It was because the Supreme Court held that the appeal had not been properly made to the court in cassation that it was dismissed or held not to lie. There was no affirmation of the declaration of the Humacao court.

Appellants contend that the opinion of the Supreme Court of Porto Rico was a final judgment upon the merits of the issues involved in this case and is conclusive upon the complainant herein. They seem to find in the language of this opinion some ground for such a claim.

Bearing in mind the practice in Porto Rico at the time relating to appeals to the Supreme Court, as hereinabove referred to, we submit that the opinion of the Supreme Court decides nothing. Its only purport and effect is to dismiss the appeal which complainant had prosecuted from the declaration of dominion.

The greater part of this opinion is devoted to reciting the findings of the lower court in accordance with the practice then in force. This recital of facts appears in those clauses beginning with the words in English, "it appearing," being the translation which the interpreter has given to the Spanish word "resultando."

It very clearly appears that the Supreme Court limited its action to dismissing the appeal.

A setting forth here of the concluding paragraphs of the opinion will demonstrate this (p. 40, Transcript of Record):

> "Considering that even supposing that the construction given by the trial court to article 395 of the Mortgage Law was erroneous in holding in one of its conclusions of law that Dona Manuela Rios could not oppose the proceeding of dominion because she instituted it in conjunction with her mother, Dona Manuela, and her sister, Dona Petronila, the reversal of the order appealed from would not be proper (*improcedente*), as it would be always sustained by the essential and necessary foundation of the same, which is the declaration made by the District Court

of Humacao after having been proven the dominion of the properties in question without any limitation or reservation whatsoever, *which declaration cannot be discussed in cassation, because the appeal of cassation was not founded upon paragraph 7 of article 1690 of the Law of Civil Procedure.* (Italics ours.)

"Considering that the order appealed from conforms to all the claims made by the parties and does not grant more than was prayed for, as it is thereby granted the prayer made by Dona Manuela Gutman, and her daughters, Dona Maria and Dona Petronila, in the petition instituting the *ex parte* proceedings of dominion, and the claim made by Dona Maria, through her attorney Don Juan F. Vias, is denied.

"Considering in consequence thereof that the appeal taken is improper (*improcedente*) for all and each one of the grounds thereof—

"We hold that we should declare, and do hereby declare, that the appeal of cassation taken by Dona Maria Rios y Gutman, cannot be sustained, whom we condemn to the payment of costs; and with the return of the record this decision shall be certified to the District Court of Humacao to the corresponding effects. Thus by this, our decision, it shall be published in the *Official Gazette*, we pronounce it, order it and sign."

The word "improcedente" employed in the original text of this opinion means not appealable. The translater has given to it the definition of improper, which may be accepted as the lay definition of the proper term.

The "Expedientes de Dominio" and the declaration made therein do not have the force of res judicata.

In order that the presumption of *the res adjudicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is invoked, there be the most perfect identity between the things, causes, and persons of the litigants and their capacity as such.

Article 1219, Civil Code (1902).

Judgment or decrees rendered by the court in matters of "expedientes de dominio" are never final.

The Supreme Court of Spain has settled this question in the following case, the opinion of which we set forth in full:

> Doña Bernardina Touza, appellant, *vs.* Don Ramón Rodriguez, appellee:

Appeal of cassation taken from decision rendered by the Court of Coruña, which decided that, in accordance with No. 3 of article 1694 of the Law of Civil Procedure, appeal of cassation will not lie in executive suits (*juicio ejecutivo*), nor in possessory proceedings, nor in others in which, after being ended, another suit may be brought upon the same subject-matter, except in the cases specified in Nos. 3 and 4 of article 1896.

> "It appearing that Ramón Rodriguez, based upon article 404 of the Mortgage Law, instituted dominion title proceedings for the inscription of several properties purchased from Doña Emilia Castro, and the corresponding notices having been published citing the ignored persons, there appeared Bernardina Touza, widow of José Conde, opposing the claim of Rodriguez founded on the allegations he made therein;
>
> "It appearing that the proceedings having been instituted in accordance with the Mortgage Law, the prosecuting attorney having been heard and the evidence introduced by the parties having been considered, the judge of first instance of Calanova rendered judgment on the 10th of February, 1886, declaring that the claim made on behalf of Ramón Rodriguez was well founded, further declaring the dominion of the property in question in favor of Doña Emilia Castro, to the ends of inscription in the registry of property;
>
> "It appearing that said judgment was confirmed by the one rendered on the 29th of December ultimo by the civil side of the court of Coruña, and Doña Bernardina Touza having taken an appeal of cassation,

assigning as error the violation of laws 1 and 18, title 29, Partida 3; and the prosecuting attorney having been heard objected to the admissibility of said appeal;

"The case having been heard, the Judge Don Luciano Boada, being the 'ponente':

"Considering that in accordance with paragraph 3 of article 1694 of the Law of Civil Procedure [article 1692 of the Civil Procedure in Porto Rico], the appeal of cassation does not lie in executive suits (*juicios ejecutivos*), in proceedings instituted to establish a possessory title, nor in all others which after its termination another suit may be brought on the same subject-matter, except in the cases mentioned in No. 3 and 4 of article 1690 [article 1688 of the Civil Procedure in Porto Rico].

"Considering that the judgment rendered by the court of Coruña in accordance with article 404 of the Mortgage Law [article 395 of the Mortgage Law in Porto Rico], in so far as it declares the dominion of properties for the purpose of their inscription in the registry of property, *does not deserve in any way the character of final, for another suit may be brought upon the same subject-matter which was the cause of the inscription decreed in the judgment appealed from.* (Italics ours.)

"The appeal of cassation taken by Doña Bernardina Touza from the judgment rendered by the civil side of the court of Coruña on the 29th of December, 1886, does not lie. Let this decision be made known to said court remanding the same and let it be published in accordance with law.

Decision rendered on the 29th of April, 1887, and published in the *Gazette* of the 16th of August of the same year.

See also Sentencia January 11, 1887.

It is a general rule applicable to all *ex parte* proceedings that the decisions rendered therein are never final, because they are changeable, without being subject to the terms and forms of an action at law; and although it is not included in that rule, in accordance with paragraph 2d of article 1818,

Code of Civil Procedure, the decrees with final force, and which have not been appealed from, it cannot be logically deduced therefrom that said decrees have the permanent force of *res judicata,* because they are rendered in matters upon which there has not been a *forensic discussion in a true action,* and in which circumstances may arise which may vary the transitory status of things created by the final decree, and which may require its modification by mutual agreement or by a previous corresponding action.

Decision of January 11, 1887, reported in the *Repertorio de la Jurisprudencia Civil* from 1883 to 1888, page 261.

The inscription of instruments or contracts which are not in accordance with the law are not validated thereby.

Art. 33 of the Mortgage Law.

In accordance with the decision of the Supreme Court, the plea of *res judicata* can only be set up when there is identity of persons, things, and actions.

Decision of the 28th of February, 1884, reported in the *Repertorio de la Jurisprudencia Civil* from 1883 to 1888, page 111.

In accordance with article 1479 of the Law of Civil Procedure, the decisions rendered in executive suits (*juicios ejecutivos*) cannot be set up in a plea of *res judicata,* it being reserved to the parties the right to institute an action at law upon the same subject-matter.

Decision of the 2d of July, 1884, reported in the *Repertorio de la Jurisprudencia Civil* from 1883 to 1888, page 112.

Even though there is identity of persons and actions, where the identity of things is lacking, as it is the case where the amount claimed is larger and consequently differ-

ent from the amount claimed in former suit, the plea of *res judicata* cannot be set up.

Decision of the 20th of October, 1884, reported in the *Reportorio de la Jurisprudencia Civil* from 1883 to 1888, page 112.

It cannot be validly sustained that the judgment appealed from violates the sanctity of *res judicata* where there has not been a previous action upon the question discussed in the later suit.

Decision of June 13, 1885, reported in the *Repertorio de la Jurisprudencia Civil* from 1883 to 1888, page 113.

The plea of *res judicata* requires identity of persons, things, and actions between the action wherein said plea is set up and the other from which it is taken.

Decision of June 15, 1885, reported in the same volume, page 113.

The plea of *res judicata* requires the identity of persons, things, and actions.

Decision of November 25, 1886, and June 8, 1887, reported in the *Repertorio de la Jurisprudencia Civil* from 1883 to 1888, page 114.

The plea of *res judicata* cannot be set up where the judgment rendered in the second action is based upon facts and contracts later than the judgment rendered in the first action.

Decision of July 3, 1888, reported in the *Repertorio de la Jurisprudencia Civil,* 1883 to 1888, page 115.

The main declarations of a decision cannot be set up as a plea of *res judicata* when they relate to an undetermined fact not discussed nor proven in the incidental issue where said judgment was rendered, and even less in a summary proceeding instituted and decided without hearing the other

party and when the same is not final, because the decision depends from the discussion in an ample action at law.

Decision of the 22d of November, 1888, reported in the *Repertorio de la Jurisprudencia Civil* from 1883 to 1888, page 115.

The plea of *res judicata* cannot be set up in a suit where the parties, the action brought, and the reservation made are distinct from that which was decided.

Decisions of Novémber 19, 1889, and January 13, 1890, reported in the *Repertorio de la Jurisprudencia Civil,* 1889 to 1893, page 141.

It is a doctrine established by the Supreme Court that the plea of *lis pendens* has the double purpose of avoiding expenses and preventing that the judgment rendered in one suit may be set up as plea of *res judicata* in the other; that it cannot be successfuly set up where the actions brought, the proceedings instituted, and the decisions which must be rendered are distinct; and that, in accordance with the provisions of article 1479 of the Civil Procedure, the decree of public sale rendered in an executive suit cannot be set up in a plea of *res judicata,* which always requires the existence of two actions with identity of persons, things, and grounds of prayer.

Decisions of March 10, 1890, and July 19, 1890, reported in the *Repertorio de la Jurisprudencia Civil* of 1889 to 1893, page 142.

In order that the judicial decrees renderd in one suit may be set up in another, it is necessary that there should be between the two actions the most perfect identity of things, causes, and persons.

Decisions of June 28, 1892, and August 29, 1892, reported in the *Repertorio de la Jurisprudencia Civil* of 1889 to 1893, page 143.

What has been decided in one suit cannot be set up as a plea of *res judicata* in another when the title and the character of the litigants are distinct.

Decision of October 12, 1895, reported in the *Repertorio de la Jurisprudencia Civil* of 1894 to 1897, page 90.

The identity of things, causes, and litigants or parties does not exist when in one case the action is based upon a mortgage and the other upon the title to a property.

Decisions of February 6, 1896, and March 6, 1896, reported in the *Repertorio de la Jurisprudencia Civil* of 1894 to 1897, page 90.

The laws and decisions referring to *res judicata* are inapplicable to cases where there is no identity of things nor action.

Decisions of November 27, 1896, and December 28, 1896, reported in the *Repertorio de la Jurisprudencia Civil* of 1894 to 1897, page 91.

The plea of *res judicata* cannot be set up when the only identity between the two cases is that of having one person in both actions, but the others are different and so are the actions and the questions in controversy.

Decisions of December 30, 1896, and January 26, 1897, reported in the *Repertorio de la Jurisprudencia Civil* of 1894 to 1897, page 91.

The plea of *res judicata* cannot be set up, nor can the questions be deemed to have been decided in another suit when the latter suit does not exclude the former one.

Decisions of May 17, 1898, and July 22, 1898, reported in the *Repertorio de la Jurisprudencia Civil* of 1898 to 1901, page 93.

The plea of *res judicata* cannot be set up when there is not a decision with the character of final.

Decisions of October 20, 1899, and May 14, 1900, reported in the *Repertorio de la Jurisprudencia Civil* of 1898 to 1901, page 95.

The decision of a question not submitted to a court cannot be set up as a plea of *res judicata*.

Decisions of June 1, 1900, and August 19, 1900, reported in the *Repertorio de la Jurisprudencia Civil* of 1898 to 1901, page 96.

In order that the presumption of *res judicata* may be valid in another suit, it is necessary that, between the case decided by the sentence and that in which the same is involved, there be the most perfect identity between the things, causes, and persons of the litigants and their capacity as such.

Article 1219 of the Civil Code (1902).

It having been determined and ordered by the law of civil procedure the proceedings which must be instituted in order to make a partition and adjudication of the properties or intestate inheritance, it is not lawful for the individuals to adopt distinct proceedings, because public interest to which class the civil procedure belongs, require that the compliance or non-compliance of the same should not be left to the caprice of the individuals. In accordance with this, the partition of an inheritance made in violation of the provisions of article 1049 *et seq.* of the Civil Code and of the Law of Civil Procedure are null in accordance with article 4 of said Civil Code, and the inscription on the registry should not be made according to article 65 of the Mortgage Law.

Decision of the office of the Registrars of Property of December 24, 1900, reported in the *Diccionario de Jurisprudencia Hipotecaria* by Odriozola, page 890.

In the case at bar the distinct and precise issue submitted to the court below was the rights of complainant in the estate of a deceased brother, having the character of "bienes reservables."

In the "expediente de dominio" the court could not discuss that issue, and disregard the opposition of complainant and her clearly recognized rights to the property, for which a declaration of dominion was sought by Manuela.

The doctrine of *res judicata* (*cosa juzgada*) of the Spanish law is analogous to the same principle as it is recognized by the American courts.

In the case of Reynolds *vs.* Stockton, 140 U. S. Supreme Court Reports, p. 254, this court has said:

> "Persons by becoming suitors do not place themselves for all purposes under the control of the court, and it is only over these particular interests which they choose to draw in question that a power of judicial decision arises. * * * A judgment upon a matter outside of the issue must of necessity be altogether arbitrary and unjust, as it excludes a point upon which the parties have not been heard."

We hold, therefore, that the dominion proceedings and the decision of the Supreme Court of Porto Rico dismissing complainant's appeal therein are absolutely ineffective as a defense.

VII.

The court below had jurisdiction over the subject-matter and had power to grant the relief prayed. It had the power to set aside and annul the "expediente de dominio" and the proceedings investing the same for the reason that they were instituted and carried on fraudulently, to the prejudice of complainant, and because the District Court of Humacao did not have jurisdiction to make the declaration of dominion requested.

If appellee's contentions are correct, that neither the declaration in the *expediente dominio,* nor the decision of the Supreme Court rendered therein, has the force of *res judicata;* or if such declaration was obtained by fraud or made by a court without jurisdiction, then we invoke only the ordinary and accepted jurisdiction of the Federal courts with respect to setting aside judgments and proceedings of other courts.

Having acquired jurisdiction of this case for the purpose of annulling the private contract, the jurisdiction of the lower court extended to granting all relief incidental thereto and necessary to restore complainant to the situation which existed at the time of the execution of such contract.

In the case of Elliott *et al. vs.* Lessee of Pearsell *et al.,* 1 Pet., 340, it was held that if a court act without authority, its judgments and orders are regarded as nullities.

> "They are not voidable, but simply void and form no bar to a recovery sought even prior to a reversal, in opposition to them. They constitute no justification; and all persons concerned in executing such judgments or sentences are considered at law as trespassers. This distinction runs through all the cases on the subject and it proves that the jurisdiction of any court exercising authority over a subject may be

> inquired into in every court when the proceedings of the former are relied on and brought before the latter, by the party claiming the benefit of such proceedings."

Where a Federal court has jurisdiction in a case it should not be left to the determination of the State courts simply because another action is pending therein for the same purpose.

In re Langford, 57 Fed. Rep., 570.

Replying to an objection of counsel in the above case, *In re* Langford, to the effect that a Federal court should not assume jurisdiction of a case where the same matter was being litigated in a State court, the court said:

> "The return suggests that comity between the courts should induce this court to hold its hand and leave the determination of the questions involved in this case to the State courts. It is the duty of a judge, when relief is sought before him in a matter within his jurisdiction, speedily to hear the plaint, and, if the party is entitled to the relief, to give it. He cannot shift from his shoulders the responsibilities of his judicial function, and impose them upon another. Strong as the temptation and agreeable as it would be to do so, he cannot do it without loss of self-respect."

The jurisdiction of neither court is affected by the proceedings in the other.

Buck *vs.* Colbath, 3 Wallace, 334 (U. S. Supreme Court Reps.).

> "It is not true that a court, having obtained jurisdiction of a subject-matter of a suit, and of parties before it, thereby excludes all other courts from the right to adjudicate upon other matters having a very close connection with those before the first court, and in some instances, requiring the decision of the same questions exactly."
>
> Same case.

"If a State or local court has not taken possession of property in a suit pending therein, the same is no bar to a subsequent suit in a Federal court upon the same cause of action."

Andrews *vs.* Smith, 5 Fed. Rep., 836.
Hickox *vs.* Elliott, 27 Fed. Rep., 843.

The District Court of the United States for Porto Rico has concurrent jurisdiction with the insular courts in all matters which by the acts of Congress come within the jurisdiction of said court.

Hurst *vs.* Everett, 21 Fed. Rep., 220.
Harrison Wire Company *vs.* E. S. Wheeler & Company, 11 Fed. Rep., 207.
Logan *vs.* Greenlaw, 12 Fed. Rep., 19.
Merritt *vs.* American Steel Barge Company, 79 Fed. Rep., 232.
Powers *vs.* Blue Grass Building & Loan Association, 86 Fed. Rep., 710.
Gay *vs.* Brierfield Iron Co., 16 Lawyers' Reps. Ann., 567.

Complainant is entitled to prosecute her suit in this court by virtue of the act of Congress of March 2, 1901, and she cannot be deprived of that right. Pendency of a suit or proceedings in one court involving a question, controversy, or inquiry is no bar to the exercise of jurisdiction in the determination of the same question in another court.

Ball *vs.* Tompkins *et al.*, 41 Fed. Rep., 486.
Stanton *vs.* Embry, 93 U. S., 548.

"The jurisdiction of the Circuit and District Courts of the United States is not affected by any action which may be taken in the State courts of concurrent jurisdiction unless such action involves taking possession of the *res* by a receiver or otherwise."

Gordon *vs.* Gilfoil, 99 U. S., 168.
Insurance Company *vs.* Bruens Assignee, 96 U. S., 588.
Woodbury *vs.* R. R. Company, 72 Fed. Rep., 371.
Liggett *vs.* Glenn, 51 Fed. Rep., 381.
Muskegon *vs.* Clark, 62 Fed. Rep., 694.

"Pendency of a suit in a State court for foreclosure will not bar a suit in a court of the United States even between the same parties and for foreclosure of the same mortgage."

Weaver *vs.* Field, 16 Fed. Rep., 22.
Beekman *vs.* R. R. Company, 35 Fed. Rep., 3.

"Although a mortgagor of realty has made a statutory general assignment for the benefit of creditors, this does not affect the right of the mortgagee, being a citizen of another State, to sue in the Federal court for the foreclosure of the mortgage."

Edwards *vs.* Hill, 59 Fed. Rep., 723.

"Although the statutes of a State may provide a summary method for the foreclosure of mortgages executed in a particular manner, or may provide for a special statutory proceeding at law applicable to all mortgages, doing away with the jurisdiction of equity in such cases, and although the remedy so provided may be entirely adequate and complete, yet such provisions do not apply to the Federal court sitting within the State, nor deprive it of power or jurisdiction to decree foreclosure of mortgage on land therein according to the practice and forms of chancery."

Fleitas *vs.* Richardson, 147 U. S., 538.
Ray *vs.* Tatum, 72 Fed. Rep., 112.
Davis *vs.* James, 2 Fed. Rep., 618.

The above cases clearly establish the right of the complainant herein to bring this suit in equity for the purpose of obtaining complete and full relief, according to the practice and forms of the chancery jurisdiction of the United States courts, for the purpose of not only removing the cloud upon her title created by the void *expediente* of *dominio*, but also to follow the fraudulent transfers of the property in question to alleged innocent purchasers.

"Although a suit in the nature of a proceeding *in rem* against certain property may be pending in the State court, yet if no actual possession of the property has been taken in such suit in the State court, the

Federal court is not prevented from entertaining a similar action and seizing the property."

Compton *vs.* Jesup, 68 Fed. Rep., 263.

"As between a Federal court and a State court, the question of priority of jurisdiction is not determined by the date of the commencement of the suit, but of the acquisition of possession of the *res*,"—

Bell *vs.* Trust Company, Fed. Cases, 1260;
Union Mut. Life Ins. Co. *vs.* Chicago Uni., 6th Fed. Rep., 443;
Bird *vs.* Keys, Fed. Cases, 2212,

"which he is entitled to have protected by its authority, the mere fact of the existence of a concurrent jurisdiction in the State courts will not authorize or require the Federal court to decline to take cognizance of the cause. In such circumstances the suitor has a right to choose a tribunal in which he will proceed."

Tobey *vs.* Bristow Co., Fed. Cases, 14065.
Wadleigh *vs.* Vazio, Fed. Cases, 17031.

"For example, the fact that the right to enforce a mechanic's lien, as given by the State statute, and that it confers an adequate and complete remedy at law in the State courts, does not take away the equitable jurisdiction of the Federal circuit courts where the requisite diversity of the citizenship of the parties exists and the amount in controversy exceeds the limit prescribed."

Delavergne Ref. M. Co. *vs.* Montgomery Bluing Co., 46 Fed. Rep., 829.

"The fact that property is being administered upon in proceedings in a State court, and that the plaintiff, claiming an interest therein or lien thereon, might apply to that court for relief and be taken into the proceedings, is no bar to the institution of proceedings in a Federal court having jurisdiction."

Griswold *vs.* R. R. Co., 9 Fed. Rep., 797.
Sawyer *vs.* Parish of Concordia, 12 Fed. Rep., 754.

"Nor is the rule altered by the fact that the laws of the State purport to confer upon its own court an exclusive jurisdiction of a class of cases to which the one in question belongs. It is not in the power of the States either to add to or take from the jurisdiction of the courts of the United States or to deprive a person entitled thereto by the laws and acts of Congress from enjoying that jurisdiction. That jurisdiction is fixed by the Constitution and acts of Congress and is entirely independent of State laws."

May *vs.* Saginaw Co., 32 Fed. Rep., 629.

"The Federal courts have plenary jurisdiction to enjoin the enforcement of unconscionable judgments and decrees, to which the defendants had meritorious defences, that they were prevented from availing themselves of by fraud, accident, or mistake. They have the same power to relieve on account of accident or mistake as on account of fraud."

"A Federal court, sitting in equity, has jurisdiction to enjoin the enforcemnt of an unconscionable judgment of a State or of a national court for new causes, such as fraud, accident, or mistake, which prevents the judgment defendant from availing himself of a meritorious defense that was not fairly presented to the court which rendered the judgment."

Nat. Surety Co. of N. Y. *vs.* Nat. Bank of Humboldt, 120 Fed. Rep., 593.

In the case of German Savings & Loan Society *vs.* Dora May Dormitzer *et al.*, 192 U. S., 125, it is held:

"A decree of divorce may be impeached collaterally in the courts of another State by proof that the court granting it had no jurisdiction because of the plaintiff's want of domicile, even when the record purports to show such jurisdiction and the appearance of the other party."

VIII.

The defendants, Garzot and Fuertes, are not innocent third purchasers, and complainant was entitled to the annulment and cancellation of the deed to them.

In our view and as above contended, all discussion of this point before this court is foreclosed by virtue of the terms of the 15th Finding of Fact (R., 592), and it is no more open to discussion as matter of law because of the absence of a bill of exceptions.

But if for any reason this position should be thought not to be well founded, we venture to submit the following observations on the point:

Counsel for appellants Garzot and Fuertes contended that under the evidence offered in the trial court, the latter was not justified in finding that they had purchased the property "Cercado Ramirez" with actual and constructive notice of the fraud perpetrated upon complainant. In other words, under the law of Porto Rico, Garzot and Fuertes were "terceros," which term in general may be said to correspond with the expression of the American and English law, "innocent third purchasers for value."

To start with, counsel for appellee submits the following provisions of law of Porto Rico bearing upon this point, and in this connection attention is called to the fact that at the time of the purchase by Garzot and Fuertes, August 26, 1902, there was then in force in the island the Revised Civil Code adopted by the Legislative Assembly of Porto Rico, and which took effect therein on the 1st of March, 1902.

Garrozi *vs.* Dastas, 204 U. S. Sup. Ct. Repts., p. 64.

The following sections of this Code are submitted:

A *bona fide* possessor is deemed to be a person who is not aware that there exists in his title or the manner of acquiring it any flaw invalidating the same. A possessor in bad faith is

deemed to be any person possessing in any case contrary to the above.

Section 436.

Good faith of a possessor consists in his belief that the person from whom he receives the thing was the owner of the same and could convey his title.

Section 1851.

A proper title must be proven; it never can be presumed.

Section 1855.

By a proper title is understood that which legally suffices to transfer the ownership or property right, the prescription of which is in question.

Section 1853.

The following articles of the Mortgage Law applicable to this point are submitted:

The record of instruments or contracts which are null in accordance with the law are not validated thereby.

Article 33.

Suits for rescission or determination of title cannot be instituted against third persons who have recorded instruments of their respective interests in conformity with the provisions of this law.

Article 36.

Exceptions to the rule contained in the preceding article are:

(1) Suits for rescission or determination of title which are due to the causes plainly expressed in the registry;

(2) Suits for rescission of conveyances made for the purpose of defrauding creditors in the following cases:

When the second conveyance has been made without consideration;

When the third person was a party to the fraud.

In both cases the third party shall not be prejudiced by any action for rescission not brought within one year from the time of the fraudulent conveyance.

Article 37.

The owner of the realty or of the property right shall be considered a party to the fraudulent conveyance in the second case, No. 2 of article 37.

(1) * * * * * *

(2) When he acquired his interest either directly from the debtor or from a subsequent purchaser for half or less than half of its true value.

Article 41.

Appellee contends that, as will be hereafter more clearly explained, the defect in the title attempted to be transferred to appellants Garzot and Fuertes appeared or was "plainly expressed" in the registry of property, by reason of the fact that the registry showed the interest and title of complainant in the said property, not only as heir of her father, but also as heir of her brother, and therefore said property had the character of "bienes reservables." The registry of property showed also a filing of a *lis pendens* (*anotacion preventiva*) by complainant prior to the purchase of the said property by Garzot and Fuertes, in which was substantially set forth the claims of complainant to the said property as well as the fraudulent and illegal character to the private contract and the "expediente de dominio." (See Exhibit "U," pp. 561-562; Transcript of Record.)

The evidence disclosed, and the court below so found (15th finding of fact, p. 592, Transcript of Record), that Garzot and Fuertes acquired the said property for less than one-half of its real value. The *lis pendens* (*anotacion preventiva*), above referred to, was presented in the appropriate registry of property by appellee on the 5th day of May, 1902. It consisted of an order duly issued on the 1st

of February of that year by the District Court of Humacao, "in which it is made known to this registry the nullity requested by the lawyer Don Juan F. Vias Ochoteca, representing Dona Manuela Rios y Gutman, widow of Rubio, in the suit instituted by her against Dona Manuela Gutman, widow of Bustelo, and Dona Petronila Rios y Noya, for the purpose of declaring null and void and without any value the private contract of transaction of hereditary rights and interests and of an 'expediente de dominio' instituted for the purpose of inscribing the following properties." (Here follows a list of the properties involved in the suit.)

It appears by the certified copy of this document, issued by the registry of property, which was offered in evidence by complainant in her said Exhibit "U," that it was entered in the "day book of transactions of this office."

Counsel for appellants contend that the said *lis pendens* (*anotacion preventiva*) should have been entered in some other book or in some other manner.

We do not agree with this contention. The day book provided for by the Mortgage Law is a part of the records of the registrar's office and is intended for the entry of documents which daily are presented in the office.

Referring to the Regulations of the Mortgage Law, article 88, it is provided:

> "Judges or courts before whom an action is brought concerning the nullity of an entry or record shall inform the proper registry of this suit.
>
> "The registrar on the same day he receives the notice from the judge or court shall make a marginal note against the entry or record in the following terms: 'Suit against the nullity brought by N. —— before the inferior court or court of —— office of —— ——, date and surname."
>
> "The registrar shall authenticate with his signature in full the entries of presentation contained in the Day Book as well as the records, cautionary notice and cancellations, and the notes, with an abbreviation of his name."
>
> Section 237 of the Mortgage Law.

Article 222 of the Mortgage Regulations includes a Day Book among the other official books of the registry.

Article 223 of said regulations provides: "The official books shall be the Day Book of operations (transactions) and those of the registry, etc."

Registrars shall also keep a book, called the Day Book, in which they shall make a brief entry of the contents of every document at the time of its presentation.

Article 238 of the Mortgage Law.

The entries in the Day Book shall be numbered in proper order at the time of their inscription.

Section 239 of the Mortgage Law.

When the registrar makes the record, cautionary notice, or cancellation to which the entry of presentation refers, in the proper book, he shall state this fact by means of a marginal note opposite said entry of presentation, stating the said volume and folio where the former may be found, as well as the number of the estate according to the registry and the number given to the requested record.

Section 241, Mortgage Law.

Article 240 of the Mortgage Law provides the manner in which entries in the Day Book shall be made, so that they shall contain (1) the name, surname, and residence of the person presenting the document; (2) the hour of its presentation; (3) the character of the document presented, its date, and the official or notary subscribing it; (4) the character of the interest created, conveyed, modified, or abrogated by the document to be recorded; (5) the nature of the estate or property right which is the subject of the document presented, with a statement of its location, its name, its number, if it should have any; (6) the name and surname of the person in whose favor the record is desired; (7) the signature of the register and of the person who presented the docu-

ment, or of a witness, should they personally not be able to sign.

We submit that the *lis pendens* (*anotacion preventiva*) and the entry thereof in the Day Book complied strictly with the foregoing requirements.

Article 249 of the Mortgage Law provides that the order shall be issued in duplicate.

> "The registrar shall return one of the copies to the judge or court from whom it was received or to the interested party who may have presented it, with a note signed by him, stating that it has been complied with, and keeping the other one in his office, making thereon a rubricated memorandum similar to the one made on the copy returned. The documents shall be filed in a package, numbered in the order of their presentation."

It is apparent, therefore, that the original order of the court or "anotacion preventiva" is as much a part of the records in the registrar's office as the entry in the Day Book or other volume.

This document was duly archived in accordance with law, and the entry thereof appeared in the Day Book, both of which served as notice to the intending purchasers, Garzot and Fuertes.

Section 1258 of the Civil Code of 1902, which refers to the rescision of contracts, provides:

> "The following may be rescinded:
>
> * * * * * * *
>
> "4. Contracts relating to things in litigation, should they have been executed by the defendant, without the knowledge and approval of the parties in litigation or the competent judicial authority."

The property in question was in litigation at the time it was purchased by Garzot and Fuertes. It was the object of the suit filed by complainant in the District Court of Huma-

cao to annul the private contract and the "expediente de dominio," and which was subsequently abandoned by her.

By the law of Porto Rico and the decisions of the Supreme Court of Spain construing the above article, *the mere sale of property which is a subject of litigation, independently of the* question of notice, is voidable.

Scaevola, in vol. 20 of his Commentaries on the Code, page 912, says of this article "that the judicial authority referred to therein must be the same court or tribunal in which the litigation is pending, and that specific and special authorization must be obtained for such sale."

One is bound by knowledge acquired of an unrecorded title from information, whether he believes it or not; otherwise he may decline, by inspecting the notarial records, to verify what he has heard, and thus put himself beyond the reach of all notice of title saving that resulting from registry; notice derived from any other source could produce no legal effect, the revelation having been given as want of faith at his own peril.

Swan *vs.* Moore, 14 La. Annual Reports, 833.

Where a plaintiff registers his judgment (title) after having heard a report which he does not believe, that property registered in his debtor's name is claimed by defendant, who it subsequently appears, had bought it by a prior, but unrecorded notarial act, the last title will prevail against plaintiff's judicial mortgage.

Swan *vs.* Moore, *supra.*

Garzot and Fuertes bought from defendant Palmer without the knowledge and consent of complainant or without the specific approval of any judicial authority.

The doctrine of constructive notice exists in Porto Rico. The inscription of a title in the registry of property does not protect purchaser acquiring the same with actual knowledge of defects therein. In the case of Valdes *vs.* Del Valle *et al.*

it was decided by the Supreme Court of Porto Rico, December 30, 1899 (Decisions Supreme Court of Porto Rico, vol. 1, p. 25), "The character of 'tercero' (innocent third purchaser), to which the Mortgage Law refers, must be understood in harmony with what is expressed in the exposition of motives of the primitive law." And, further, *"they are not entitled to consideration as 'terceros' (innocent third purchasers)* those who, although not having taken part in the document or contract inscribed, should have at the time of acquiring the real estate, or prior thereto, knowledge of charges or incumbrances affecting the same."

It is a principle of the Spanish jurisprudence that the acts and contracts absolutely void (*ab initio*) cannot be ratified, as they are governed by the well-known principle that what is void cannot *ex post facto* become valid.

The heirs of and those claiming under a purchaser of bad faith cannot invoke the character of third or innocent parties, for, although without any material intervention in the conveyance, they must be regarded as a continuation of the personality of the original purchaser.

Decision of the Supreme Court of Spain, January 26, 1901.

Garzot and Fuertes cannot invoke the privilege of "tercero," or innocent third purchasers, because they are "causa habientes" of Palmer, Burset, and Manuela, each of whom acquired their title in bad faith.

Decision, Supreme Court of Spain, January 26, 1901.

Errors Assigned by Appellants Which Have Not Been Considered Specifically by Appellee in the Foregoing Points.

Whilst we have endeavored to discuss the issues involved in this case under the foregoing points or propositions, we have not undertaken to answer all assignments *seriatim*. Most if not all of them have been met and disposed of by the general suggestions heretofore made herein.

As to the "Deprivation of Chosen Counsel."

We think the action of the court below was proper and fairly within the discretionary power of the trial court. In the absence of a bill of exceptions signed by the trial judge the objection cannot be considered here.

The Denial of the Various Motions to Dismiss and to Find for Defendants.

The action of the court in this regard must depend upon the propositions heretofore discussed herein. The record contains no bill of exception in such regard.

Right to Change Theory of Case by Amendment After Proof.

Merely increasing the values originally claimed for the land in question by amending the bill of complaint in that regard does not constitute a change of theory of the case.

There were other grounds upon which complainant relied to defeat the title of defendants Garzot and Fuertes.

Under the circumstances, the fact whether the latter paid nothing or but little for the property acquired by them is only an incidental circumstance in determining whether

they were purchasers with notice of the defect in the title and with notice of the claims of complainant.

The Rulings upon the Evidence.

These are not discussed because, as hereinabove contended, we do not believe they have been properly preserved, or that this court will go back of the general Findings of Fact.

Upon so much of the record as is open to the inspection of this court, the decree of the District Court of the United States for Porto Rico should be affirmed.

Francis H. Dexter,
Frederic D. McKenney,
Solicitors for Appellee, Maria Rios de Rubio.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D. 1907.

No. 141.

GARZOT & FUERTES, APPELLANTS,

vs.

MARIA RIOS DE RUBIO, APPELLEE.

No. 142.

VICTOR BURSET ET AL., APPELLANTS,

vs.

MARIA RIOS DE RUBIO.

No. 604.

CATALINA ROMAGUERA ET AL.

vs.

MARIA RIOS DE RUBIO.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

REPLY BRIEF FOR APPELLANTS.

FURTHER SUGGESTIONS UPON RES JUDICATA.

Counsel for appellee admit on page 24 of their brief that the object of complainant's suit in the court below was threefold and express that threefold object in the following way:

(1) To annul the private contract alleged to have been obtained from complainant by fraud and collusion, and which under the law of Porto Rico was legally insufficient to operate as a release or renunciation of the hereditary rights of complainant in the lands involved in the suit.

(2) To declare null and void the *expediente de dominio* and the declaration or registry of title made as a result thereof in favor of complainant's mother, because it was the result of fraud and collusion and because the court making the same proceeded without jurisdiction.

(3) To annul the various fraudulent and simulated transfers of the property by complainant's mother and her grantees after the dominion to the property had been declared in her.

If the plea of *res judicata* interposed below by the appellants show that these points were not only involved in but adjudicated by the proceedings set up as a bar in said plea, or else are of such a character as not to serve as a legitimate basis for this equity suit, then we submit that we have demonstrated that that plea ought to have been sustained and the bill dismissed upon that issue.

The third object of the suit, as above stated, relates to transactions not taking place until subsequent to the dominion proceeding, and hence could not have been involved in those proceedings; these subsequent transactions are not alleged as independent grounds of relief, but as matters against which appellee was entitled to relief upon proof of the first two substantive grounds.

The first object, as above stated, is composed of two branches; in other words, the private contract is alleged to be (*a*) void on account of fraud and collusion in obtaining it, and (*b*) legally insufficient to operate as a release or renunciation of the hereditary rights of complainant.

That the first branch of the above proposition is legally insufficient to entitle complainant to relief in equity is settled by the case of U. S. *vs.* Throckmorton (98 U. S., 61),

which is cited and considered on pages 41 to 43 of our main brief and was fully presented in our oral argument.

The remaining objects, therefore, asserted by complainant in her suit below were:

The annulment of the private contract on account of its insufficiency and the annulment of the dominion proceedings because they were collusive and because the court making the same proceeded without jurisdiction.

These three points we will take up *seriatim* and hope to convince the court that all of them were either considered and decided in the dominion proceedings or are shown by those proceedings to be legally impossible.

1.

Was the question of legal sufficiency of the private settlement submitted to and decided by the Insular Court?

Turning to the exhibit of the plea of *res judicata* (R., p. 37), we find at the bottom of that page that the lawyer, José Maria Cuadra, represented in the dominion proceeding the two sisters, Maria and Petronila, and that he, jointly with Lopez Landron, the lawyer representing the mother, filed this proceeding.

Turning then to the private agreement (R., pp. 63 or 84), we find that by the 6th clause of that agreement these two lawyers were expressly authorized and—

> "requested to carry out to an end this transaction so that it may be carried out without loss of time until each interested party is left in full possession of what is given to him (her) by this agreement and furnished with their respective titles of ownership inscribed in the registry of property free from charge or encumbrances."

Upon page 38 of the Record, continuing the decision of the Insular Supreme Court, appears also the following finding of fact made by that court:

"It appearing that among the evidence annexed to the record there appears the private agreement of settlement * * * which agreement was introduced by the attorney for the sisters, Doña Maria and Doña Petronila Patricia Rios, as the title of acquisition of the properties without any encumbrance whatsoever, *and which authenticity has not been assailed*" * * *

In the next paragraph that court states the date on which lawyer Cuadra retired as the representative of Doña Maria and the date on which lawyer Vias assumed that representation, following which is this language describing what was done by lawyer Vias:

"He petitioned in the name of Doña Maria that there should be finally approved the *ex parte* proceedings instituted, with the express declaration that the properties acquired by Doña Manuela Gutman were with the character of abintestate inheritance from her son of the first marriage, Don José Rios y Gutman, and that those belonging to the sisters Rios y Gutman proceeded from the inheritance of their deceased father, Don José Maria Rios y Berrios, denying in case it should not be so declared the approval requested, because of not stating in the petition instituting the proceeding the real title of acquisition of the properties adjudicated to Doña Manuela Gutman, widow of Bustelo, *he having enlarged the evidence previously offered.*

"It appearing that among the evidence introduced by the attorney for Doña Maria Rios there appear the certificate of death of Don José Maria Rios y Berrios, the certificates of birth of his daughters Doña Maria and Doña Petronila Patricia Rios y Gutman, and of his son Don José Maria of the same surname, the declaration of heir abintestate of Don José Rios y Gutman made in favor of his mother Doña Manuela by decree of the 20th of April, 1892," etc.

This last specified evidence was clearly what Vias had offered in "enlarging" upon Cuadra's offering, because it is

stated as introduced by the "attorney for Doña Maria" while Cuadra is always referred to as attorney for both sisters.

Considering the above language, we ask the court in all candor if the following facts do not appear therefrom:

That, notwithstanding Maria alleges that Cuadra began the dominion proceeding against her will and contrary to her instructions, she subsequently, by her lawyer Vias, adopted the action that Cuadra had taken, adopted the evidence Cuadra had offered, recognized the authenticity of the agreement, enlarged upon that evidence by offering more and, jointly invoking the jurisdiction of the court to make a declaration of dominion, solely insisted upon the condition that the dominion declared in the mother should be a conditional one based upon an expressed finding that the properties adjudicated to the mother were acquired as an intestate inheritance from her deceased son, Vias thinking that such an express finding would result in those properties having the character of *"bienes reservables"*; and that Vias further insisted to the court that, in case the change suggested in the character of the dominion to be acquired by the mother should not be granted, his client positively opposed the granting of any dominion title and, as stated in complainant's bill (R., p. 45), "demanded that her rights and interest in the said properties acquired by her through inheritance from her deceased brother should be recognized and declared."

Let us next enquire what the Insular Court actually *did* in view of this petition of Vias.

By reading the first line of the second paragraph of this same decision, on page 40 of the record, the Supreme Court finds "that the trial court *admitted the opposition* made by Doña Maria Rios to the *ex parte* proceeding of dominion and the evidence introduced in support thereof," while, turning back to the first paragraph on page 39, we find that, after admitting this opposition and proceeding with the trial, the trial court determined the following matters:

(*a*) That the settlement made between these parties, its subject-matter being lawful, was not only a valid contract, but had the authority of *res judicata;* (*b*) that the *opposition* on the part of such party recognizing such valid contract made to the petition, praying for dominion title thereunder, in which she had joined, can not be sustained; (*c*) that Doña Maria had accepted the settlement which was the basis of the dominion proceeding; (*d*) that the questions of fact involved were peculiarly within the province of the trial court to determine, and, having considered them, it did determine that the proofs warranted the declaration of dominion in the manner requested in the original petition; (*e*) that the proofs did not warrant the declaration of any limitation or reservation of usufruct.

As the allegation of the amended bill above quoted and also the foregoing quotation from the Supreme Court of Porto Rico reciting what Vias actually requested, after he came to represent Doña Maria in the trial court, both show that he was alleging and depending upon the legal proposition that the dominion judgment must decree the titles in the same manner they had been respectively inherited *because* the interests so inherited could not be changed by a private agreement, we think it clear that the trial court directly passed upon that question and decided its merits against Vias' contention by its Finding (*a*) aforesaid, of which we quote the exact language:

> "That the settlement agreed between capable persons upon a lawful matter is not only a valid contract, but for the parties executing it has the authority of *res adjudicata*, in accordance with articles 1809 and 1816 of the Civil Code; * * * that she accepted the settlement invoked as a title of dominion of the properties to which the *ex parte* proceeding refers," etc.

Opposing counsel are contending that because of the wording of that part of the court's findings whose equivalent is expressed under the letter (*b*) aforesaid, the opposition of

Doña Maria to the *ex parte* proceeding did not become contentious, from which they deduce the desired result that the action of the court was not *res adjudicata*. But we submit that this conclusion is not tenable for two reasons: First, because the court specifically found that the opposition was admitted, as has been above indicated, and, second, because the meaning of the two findings (*b*) and (*c*), taking them together, is seen to be that the opposition made by Doña Maria and admitted by the court was held to be not legally well founded, *for the reason* that she had accepted the settlement upon which the petition for the dominion title was based, the terms of which settlement themselves expressly authorized any proper proceeding to obtain a full title for the respective parties, and even named Cuadra as one of the attorneys empowered to carry out the same. The decision of the trial court, therefore, was in effect simply that one of the parties in whose name the petition for a dominion title had been filed could not come into court, and, admitting that the contract authorizing the use of her name for that purpose was authentic, and further admitting that she was willing the full title to her part of the property should be decreed to her thereunder, at the same time successfully claim and insist that the court should not so find or decree unless the terms of this written agreement, the basis of the petition, be violated in another respect by changing the character of title which her mother was to obtain thereunder. The court admitted the opposition, considered its grounds, and overruled them.

But opposing counsel further argue that, admitting the Insular Court sustained the private contract, still this court should not regard that as conclusive, because that finding was obtained by collusion between the mother and Cuadra, as attorney and acting for Doña Maria. This is the second part of their contention as above subdivided and will now be considered.

2.

Does not the record itself of the dominion proceedings negative any possibility of collusion?

First, we submit the inquiry, whether any collusion alleged must not have continued until the final result was reached in order to be material? If so, no material collusion *could* have existed here, because it will not be disputed that the decision of the court shows (R., p. 38) that Cuadra was dismissed and Vias substituted early enough in the suit to enable the latter to make any defense or opposition he desired. Against this it may be suggested that Doña Maria was by the very fact of her being a party petitioner prevented from questioning the basis of the petition. To this we reply, No. The *reason* for the court denying her that right was not the fact alone that she was a party to the petition, but rather the fact that as a party, although making opposition, she had by her new lawyer *expressly ratified* the evidence previously introduced by the lawyers of all the parties and thereby admitted the authenticity of that contract, as we have already explained under the previous head of this brief.

If any harm came to Doña Maria by the institution of these dominion proceedings, it was not because of their being, as she alleges, unauthorized by her, but because, when subsequently entering her opposition, she did not oppose them on the ground of their being unauthorized, but *adopted* so much of them as would be beneficial to her, adopted the contract so far as the fact of its execution was concerned, and attacked only its construction and legal force, thus attempting to hold the full title which the petition prayed in those properties going to her, while securing also from the court all the title except a life estate in all the properties going under the contract to her mother.

But we submit as the true and correct position that, whatever collusion may have existed at the institution of the

dominion proceedings, the court below has found that Doña Maria discovered it within a day or two after the signing of the private agreement (Finding 10, p. 590, Record). She therefore was in position to protect herself and did protect herself by changing her attorney and proceeding with the assertion of her rights as she was advised.

Therefore the question whether there was originally collusion becomes one which cannot affect the result of this case, and one which is being used by appellee to prejudice the rights of present parties, who are not shown to have any connection with the litigation at the time of such alleged collusion.

We submit, therefore, that the record of the dominion proceedings shows that no collusion could have affected the result of the same.

3.

Did the Insular Court have jurisdiction of the dominion proceedings, aside from the question of collusion?

It seems to be admitted that, in a case free from collusion, the court in question would have had jurisdiction of the ordinary *ex parte* proceeding (Brief of Appellee, p. 49), but their argument seems to be that the law required that, upon opposition being made, the proceeding should become contentious: that it is not shown that any express order was made changing the form to contentious; hence they must be presumed to have proceeded *ex parte;* and that, in case of opposition made, the form of procedure becomes a question of jurisdiction.

We reply, in the first place, that the *form* would not be controlling. The court may have failed to take the proper steps when opposition was entered; but that could not change the *substance*, because the Supreme Court of Spain has laid it down in the decisions cited in our main brief (pp. 61-64) that upon opposition entered the suit *ipso facto*

becomes contentious; and the Statute says (art. 1816, our brief, p. 60) that this change shall be—

> "without altering the situation of the parties at the time of the institution of the proceedings, nor the subject-matter thereof, and it shall be subject to the *procedure prescribed* for the proper action," etc.

From which we gather that the suit is supposed to proceed right along without change except in procedure—and surely an error of procedure cannot deprive a court of jurisdiction already being exercised.

But, more than that, it is not shown that contentious procedure was not used. Paragraph 4 of article 395, relating to dominion proceedings, while *ex parte* (our main brief, p. 44), provides that appeals under those circumstances "shall be conducted in the manner prescribed for proceedings in the nature of a demurrer." Yet the appeal taken by Vias (R., p. 39, last par.) was "for violation of law authorized by paragraphs 1, 2 and 3 of article 1690" (quoted in our main brief, p. 55). It may be well to recopy them here:

> "1. When the decision contains a violation, erroneous interpretation, or wrongful application of law or of legal doctrine *applicable to the case at issue*.
>
> "2. When the judgment is not pertinent to the allegations made *by the litigants* at the proper time.
>
> "3. When the judgment grants more than is prayed for, or does not contain any declaration upon some of the allegations made in the action at the proper time."

These grounds all indicate the existence of two parties and two sides to the controversy, and are exclusively applicable to ordinary or contentious actions.

Moreover, counsel who took the appeal to the Supreme Court of Porto Rico had no doubt as to the jurisdiction, as the sixth paragraph of the article just quoted from (our

brief, p. 56) provides expressly for appeal in that event. We quote:

> "6. When, by reason of the matter at issue, there has been abuse, excess, or defect in the exercise of the jurisdiction, either taking cognizance of the matter which does not come within the jurisdiction of the court or judge, or in not taking cognizance thereof when it is his duty to do so."

We submit, therefore, that counsel then representing appellee considered the judgment of the court of Humacao as conclusive upon the questions determined, and took his appeal for the purpose of reversing that decision.

The next contention of opposing counsel is that the Supreme Court dismissed that appeal and refused to consider its merits because it was a court of cassation. But a perusal of article 1690, above quoted, together with the article preceding, will show that that is a misapprehension. The appeal was properly taken to carry up questions of *violation of law* to a court of cassation; but that court, upon examination of the errors assigned, held, as we will now show, that of the three errors assigned only two involved a violation of law, while the other involved a violation of form, to review which latter the appeal should have been taken under article 691 (copied on page 56 of our main brief).

The statement by the Supreme Court of the grounds of appeal will further show that all the errors assigned were alleged violations of that article 395 of the mortgage law, which contained the provisions authorizing this dominion title proceeding. The first error assigned is found near the beginning of the last paragraph on page 39 of the record, reading as follows:

> "Because the proceedings of dominion can only be instituted when there is no written title of it, which is not the case herein, because it has been proven that the properties in question were acquired by a perfect title by Don José Maria Rios y Berrios, from whom

his daughters Doña Maria and Doña Petronila Patricia acquired them, by virtue of his testament, Doña Manuela Gutman having acquired hers through intestate inheritance from her deceased son José Maria Rios y Gutman."

The manner in which this assignment was disposed of by the court is seen in the following language from the second paragraph at the top of page 40 of record as follows:

> "Considering that the approval by the District Court of Humacao of the proceeding of dominion instituted by Doña Manuela Gutman and her daughters, Doña Maria and Doña Petronila Rios, did not violate article 395 of the mortgage law, on the ground of said proceeding being inadmissible because the parties having had a written title of dominion, as although the former had been declared heir abintestate of her son, Don José Rios y Gutman, and Doña Maria and Doña Petronila be heirs of their father Don José Rios y Berrios, and the three of them be therefore co-owners in the common ownership of the properties belonging to the estate of the deceased Rios y Berrios, as it does not appear that a partition of this inheritance has been made, it cannot be said that either Doña Manuela or her daughters have a dominion upon *determined properties* of the same, as the *partition legally made only* grants that dominion in accordance with article 1068 of the Civil Code." (Italics supplied.)

The second error assigned is found at the middle of said last paragraph on page 39, which reads as follows:

> "after having admitted the motion of opposition of Doña Maria Rios and accepted the evidence tending to prove it, the order appealed from could not have been given without previously hearing all the parties in interest, which order does not cover the claims made by Doña Maria, which have not been decided;"

The decision of the court upon this assignment of error is shown by the following language of the third paragraph on page 40:

"Considering that the trial court *admitted the opposition made by Doña Maria Rios* through the *ex parte* proceeding of dominion and the evidence introduced in support thereof, although it failed to comply with Rule III of article 395 of the mortgage law, which provides, that the prosecuting attorney and others who have appeared in the proceeding should be heard in writing as to the claims and evidence presented, the violation of this provision of law, supposing that it might be applicable to the case in question, as it is of an adjective nature or relating to *procedure* could never be the ground of an appeal of cassation *for violation of law.*" (Italics supplied.)

The third error assigned follows the others in the same paragraph (bottom of page 39):

"The construction given to said article 395 * * * in denying to Doña Maria Rios her right to oppose the approval of said *ex parte* proceedings because of the fact of her having instituted it."

The decision of the court upon this assignment of error is contained also upon the same page 40 in the paragraph following that last quoted therefrom, and is as follows:

"Considering that even supposing that the construction given by the trial court to article 395 of the mortgage law was erroneous, in holding in one of its conclusions of law that Doña Maria Rios could not oppose the proceeding of dominion because she instituted it in conjunction with her mother Doña Manuela and her sister Doña Petronila, the reversal of the order appealed from would not be proper, as it would be always sustained by the essential and necessary foundation of the same, which is the declaration made by the District Court of Humacao of having been proven the dominion of the properties in question, without any limitation or preservation whatsoever, which declaration cannot be discussed in cassation, because the appeal of cassation was not founded upon paragraph 7 of article 1690 of the Law of Civil Procedure."

(For paragraph 7, art. 1690, see our brief, p. 56.)

In weighing the meaning of the language used in all the foregoing quotations the court must bear in mind the infirmities of translations, and not all of the translations made by the interpreter of the court below are as clear or idiomatic as they might be. But we submit the following as a correct statement of the action of the Supreme Court touching each of the errors assigned, giving the true and reasonable meaning to the language used:

The first error was considered and decided upon its merits, the Supreme Court holding that the trial court decided right in considering that, in the absence of a showing that each of the petitioners had a title to specific tracts of properties in their inheritance, it appearing on the contrary that they were co-owners of the undivided whole, they had no written title of dominion already, as nothing but a legal partition could be evidenced of such a title under the article of the code specified.

The third error was also decided upon its merits, the Supreme Court holding that, even if the court below had erred in decreeing that Doña Maria could not succeed in her opposition because she was one of the joint petitioners therein, yet the decree in that respect should not be reversed, because the same conclusion as to the fundamental part of the decree, to wit, the granting of the dominion title as prayed in the petition, would always be necessarily supported by the finding of the court below, that *the evidence proved* the dominion to be as declared without limitation or reservation whatsoever, since Doña Maria had not founded any ground of her appeal upon paragraph 7 of said article 1690, under which paragraph only could the sufficiency of the evidence to support that finding be reviewed.

The second ground of appeal was not considered on its merits, because the court held that it brought up a question of procedure, for the consideration of which article 1691 should have been invoked, instead of article 1690, which brought up only violations of substantive law.

We therefore insist that the Supreme Court of Porto Rico, as well as the trial court of Humacao, passed upon the merits of two of the questions which opposing counsel admit were the basis of the present suit, and held, first, that the private agreement was a proper and sufficient basis for the declaration of a dominion title as prayed in the petition therefor, and, second, that the trial court had jurisdiction to do what it had done therein.

Some contention that the Supreme Court did not regard the proceeding, when on appeal, as contentious, but considered it as being still pursued *ex parte*, is based upon the description of it contained at the beginning of its decision, where it starts out as follows (p. 37 of record):

> "In the city of San Juan, Porto Rico, on the fourth of June, 1902; in the *ex parte* proceeding instituted in the District Court of Humacao," etc.

But this language plainly is used to describe the suit *as it was when instituted*, as the description continues "by Doña Manuela Gutman and her daughters," etc., which would no longer be applicable after Doña Maria separated from the other for the purpose of opposition, and that, as shown by the later language of the same paragraph, the suit on appeal is described as

> "pending before us by virtue of an appeal of cassation for violation of law, *taken by* Doña Maria Rios y Gutman, represented by the lawyer Don Juan F. Vias, the lawyer Don Rafael Lopez Landron having been in charge of the representation *and defense* of Doña Manuela Gutman, Doña Petronila Patricia Rios y Gutman not having appeared before this court."

That the Supreme Court considered it contentious before them is further shown by the following language in the last paragraph of its conclusions (p. 40 of record, near bottom):

> "Considering that the order appealed from conforms to all the claims *made by the parties* and does

not grant more than was prayed for, as it is thereby granted the prayer made by Doña Manuela Gutman and her daughters Doña Maria and Doña Petronila in the petition *instituting the ex parte proceedings* of dominion, and *the claim made by Doña Maria* through her attorney Don Juan F. Vias *is denied.*"

Upon pages 61 and 62 of brief for appellee, a case decided by the Supreme Court of Spain on April 29, 1887, is translated *in extenso*, and that case is claimed to support the proposition that decrees of courts in dominion title proceedings are never final, hence never *res judicata*.

The case is very briefly and unsatisfactorily reported, but if the court will examine it carefully it will be seen that the proceeding there described never became contentious, but retained its *ex parte* character throughout. If the court will look at the book and law of the Pastida invoked by the lady who attempted to make opposition, Doña Bernardina Touza, it will find that said law refers to a claim of title by *adverse possession*. That shows that this lady tried to come in and set up some claim that had no connection with the title described in the original petition to the court, to wit, a title of conveyance based upon purchase, hence if her claim of adverse possession was good, it would still be good after whatever action the court might take as to the validity of the independent title set up on the petition. Therefore the court held that said lady was not interested in the question before the court and *denied her right to enter opposition*, instead of admitting the opposition and deciding the questions involved against her, as was done in the case at bar. It was from this order refusing her request to make opposition that the lady tried to appeal, and the distinction between the cases is again shown by the holding in that case that she had *no right of appeal*, the language in Spanish being "*no ha lugar á la admision del recurso.*" She was not allowed to make opposition below nor was she allowed to appeal from the denial thereof.

The fact that an appeal in cassation was allowed by the Supreme Court of Porto Rico in the case at bar, while an appeal in cassation was disallowed in the case under discussion, in which the court based its decision upon a paragraph of article 1692 of the Code instead of 1690, applicable to the case at bar, also shows that the cases are quite dissimilar.

As counsel for appellee have made no question of the identity of parties or the character in which they were litigating in the respective courts (as, indeed, it is plain that on the one side is the same person, Doña Maria, and on the other one of the same persons, Doña Petronila, and the successors in interest of the other, the deceased mother), and as there can be no doubt of the identity of the subject-matter, to wit, the respective rights and interests of the same parties in the specified Naguabo properties, we submit that, if we have demonstrated above that the fundamental grounds for the relief prayed in the present suit either are insufficient in law or have been heretofore adjudicated by competent tribunals in a suit where contending parties submitted those interests to such adjudication, especially where the now complaining party was represented by the same lawyer who is still associated with the defense of her interests, the principle of *res judicata* under Spanish or American law must be applied, our pleas setting up that adjudication sustained, and the cause remanded to the court below with directions to dismiss the bill; and this we claim we have done.

Extent of Jurisdiction in This Court.

Counsel for appellee have in their brief taken the position that only three questions are open for the consideration of this court, these three being the following:

First. The jurisdiction of the court below.

This question has been fully discussed in our main brief and in the oral argument before the court, and we believe

the validity of our contention is unaffected by anything contained in the brief or oral argument of counsel for appellee and needs no further discussion.

Second. The jurisdiction of this court.

The existence of this jurisdiction is admitted by counsel for appellee as to three points, as above stated, which counsel in oral argument contended would limit the consideration of this court to the assignments of error numbered from 36 to 41, inclusive, and that numbered 46.

We think this contention of counsel for appellee is not well founded and still insist upon our position that the whole case should be reviewed as above for the reasons already set forth on pages 115 to 120 of our main brief. We do not dispute the position that appeals from the old territorial courts are governed by the statute of April 7, 1874. Our contention is that when the statute of April 12, 1900, provided that "writs of error and appeals shall be allowed and may be taken to the Supreme Court of the United States," and followed that provision by the words "in the same manner and under the same regulations." These last words, under the authority of this court in Murdock *vs.* Memphis (20 Wall., 590), referred merely to the *manner, form,* and *procedure* which should govern in the bringing of cases to this court, and left the question of the *extent to which this court would review* such cases to be governed by the general law regulating writs of error and appeals, the well recognized general rule being, as also clearly stated in the Murdock case, that writs of error bring up for review questions of law only, while appeals bring up the whole case for review upon both law and facts.

Counsel cite the case of Garrozi *vs.* Dastas (204 U. S.) as containing the ruling and decision of this court that appeals from the United States Court of Porto Rico can only be reviewed to the same extent as cases from the original terri-

torial courts under the act of 1874; but we fail to find that this court made any decision upon that subject, as no question of that kind was raised. Counsel for appellant in that case prepared his record for this court in accordance with the provisions of the act of 1874, and this court proceeded to review such questions as that record properly raised in the way it was made up; *non constat* that a record prepared in the method now contended for would not have opened up the whole case.

But even if the court shall disagree with us upon the foregoing proposition, yet certainly it cannot concede the contention of counsel which excludes review even of rulings upon the pleadings, since in the case of Harrison *vs.* Perea (168 U. S., 311), which was an appeal in an equity cause from the Supreme Court of the Territory of New Mexico, this court expressly considered and decided the merits of the rulings of the courts below upon certain exceptions to the answer of the defendant and a demurrer which complainant had filed to the cross-bill of defendant.

Counsel also contends that the rulings of the court below upon the admission and exclusion of evidence are not open to consideration here, because those rulings have not been preserved in this equity case by means of what counsel are pleased to call "bills of exceptions." We have never understood those to be applicable to proceedings in any except cases at law which come up for review by writ of error, and under this statute of 1874 proceeding by writ of error is confined to cases which have been tried by juries. But, aside from any question of the form of expression, there is no provision even in the statute of 1874 which warrants the contention that the rulings upon the admission and exclusion of evidence must be certified in any particular way by the judge himself. The exact language of the statute is: "shall be made and certified by the *court below*"; and in the case of Young *vs.* Amy (171 U. S., 179) this court construed that language, in discussing the rulings on evi-

dence, to mean simply that such rulings must be "duly excepted to and the right to attack the same preserved on the record."

We submit that that provision and that language has been complied with in the case at bar. The judge below, in his order allowing our appeal, directed (R., p. 601):

> "That a certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein, or such as counsel by stipulation may agree upon to constitute the record, be transmitted to said Supreme Court of the United States," etc.

In accordance with that order, the clerk of the court has transmitted the record which is now before this court. The certificate of the clerk shows that the record constitutes "a true and correct copy of the record and proceedings in the above and therein entitled cause called for by the præcipes of the parties therein set out for the purposes of this appeal" (R., p. 623). Referring to said "præcipes of the parties" (R., p. 607), the court will find that a præcipe was filed by counsel for appellants and a copy thereof served upon counsel for appellees, with the request, in case they desired any additional papers, they should direct the clerk to include the same. But counsel for appellee were satisfied with the completeness of the record as indicated by counsel for appellants and made no designation in pursuance of said notice. If the court will further refer to said præcipe, it will be found that the 16th, 17th, 18th, and 19th paragraphs of said præcipe show by every reasonable intendment that all the evidence was directed to be included in the transcript of record to be transmitted to this court.

If, then, it appears, as we contend it does, that the judge ordered such a record transmitted as counsel might consider complete; that the clerk in compliance with such order has transmitted such record as counsel consider complete, and the identical record which counsel directed to be transmitted; and if it further appears from the direction of coun-

sel to the clerk and the latter's certificate of compliance therewith that the clerk did *in fact* include all the testimony taken in the case *and all the rulings thereon*, we submit that the court has the same assurance, under the certificate of the clerk contained in this record, that all evidence is in fact before it with said rulings that it would have under the certificate of the judge.

Turning to the record itself, we find at the top of page 75 that R. H. Todd, who had been appointed a special examiner to take the deposition of one Algarin, filed said deposition, and that thereupon the taking of testimony orally before the court was begun, which oral testimony continues from that point to page 355, at the bottom of which is the certificate of the official court stenographer that the transcription of the same is true and correct.

It is further shown, near the bottom of page 275, that the above deposition of the witness Algarin was introduced and is included in the transcript of the testimony made by said official stenographer. The record then shows that upon the suspension of the oral testimony before the judge himself (page 356), an examiner was appointed "for the taking and conclusion of the testimony herein" and the following pages, 357 to 577, contain the testimony so taken and reported by said examiner, and at the conclusion of the report of said examiner he makes the clear statement "this was all the testimony produced before the examiner."

We submit that this condition of the record is very similar to that shown in the case of Gunnison Co. Comm'rs *vs.* Rollins (173 U. S., 255), in which the question was made that a bill of exceptions in an action at law did not show that it contained all the testimony. The closing part of the discussion in that case (page 261, bottom), referring to the bill of exceptions, after reciting the various steps shown during the taking of the testimony, continues as follows:

> "The transcript next shows some discussion by counsel as to the exclusion of particular evidence, after which is the entry: 'Thereupon counsel for de-

> fendant made a formal motion, under the evidence on both sides, that the court instruct the jury to return a verdict for the defendant.' Although the bill of exceptions does not state, in words, that it contains all the evidence, the above entries show that it does contain all the evidence."

If by the language of the bill of exceptions in that case sufficient was shown, surely the language of the record in the case at bar is at least not less clear and satisfactory.

If the signature of the judge himself to a certificate at the end of a record, where in an equity or admiralty case both law and facts are brought up for full review and reconsideration, is not necessary, but a certificate by the clerk is sufficient, we fail to see how a different certificate should be required in an equity case, where, under the statute claimed to be applicable, only certain limited questions are brought up for review, especially as that statute solely requires that it be "certified by the court below."

In connection with the foregoing, touching for a moment upon the suggestion of one of the justices that the language of the præcipe of counsel (R., 609) shows that the clerk was directed to omit "objections to questions and rulings thereon," while in fact such objections and rulings have been transmitted by the clerk and actually appear in the record, and the court is now asked to consider assignments of error based upon some of the same, we can only reaffirm the position taken at the close of the oral argument, that the important fact before the court is that these objections and rulings have actually been included in the record and are now before the court. It is not suggested that these objections and rulings were not actually made or were not a legitimate part of the record of the court below. Being in the record, it would seem immaterial whether the amendment to the directions of counsel to the clerk which caused their inclusion was or was not made a part of the record. The reason for the change in the intention of counsel in

this regard was frankly stated orally to the court, and is here briefly restated as follows:

At the time the appeal was taken and the directions originally given to the clerk for the preparation of the transcript, counsel entertained no doubt that the right of appeal to this court was unlimited, except as to amount, and would open up the whole case upon the facts as well as the law. Under that idea, the *evidence* was so clearly contrary to the findings and decree of the court below that counsel were willing to stake their appeal, so far as it involved consideration of the evidence, upon the broad proposition of its absolute insufficiency to sustain the decree, and desired to relieve the court from the consideration of the numerous secondary errors affecting the admission or exclusion of particular items of evidence.

Later, when doubt entered the mind of counsel as to the extent to which this court would review the court below, and as to whether error in any finding based upon conflicting evidence would be considered, it seemed necessary to the protection of the rights of their clients to forestall that doubt by so preparing the record as to obtain the judgment of this court upon all available questions, in the event that the statute of 1874 might in its entirety be held applicable. Then it was that the directions to the clerk were modified so as to include the rulings upon evidence and bring them to this court in compliance with said statute.

We submit, therefore, that the record, as before the court, properly presents the questions raised as to the admission and exclusion of evidence, the merits of which have been sufficiently discussed in our main brief.

Consideration for Settlement.

Counsel for appellee during his oral argument was asked by one of the justices the question whether at the time of the execution of the private settlement there was any dispute between parties thereto as to the interests they

were then respectively claiming in the inheritance from the father of the two sisters which would be a basis of consideration for said private settlement. The reply of counsel, so far as we understood it, was not direct or satisfactory. On our part, we wish to state in reply to that question that there was such a dispute, and a dispute of much importance.

The private agreement itself starts out (R., p. 84) with the statement that the parties "put an end to their differences of all kinds" by means of that agreement.

At the time of the private settlement the widow of Rios, Senior, was possessed of the whole estate of her husband, there had been no acounting or liquidation, and neither the widow nor the daughters knew what such an accounting would result in showing as the property rights of the widow upon four distinct grounds of interest which she had or might have had in the estate, namely (*a*) the amount of her own property which went into the conjugal partnership, (*b*) the one-half of the profits, if any, of the conjugal partnership, (*c*) her compensation for administering the estate of her deceased husband, and (*d*) her interest as heir of her deceased son.

To secure such an accounting and liquidation, the complainant is found to have instituted proceedings separately from her sister, and, immediately prior to the settlement, to have joined with her sister in supplemental proceedings looking to the same end, it being the desire of both of them to obtain in severalty their respective shares of the property which might be apportionable in law to them. There were differences to be discussed as to the rights of inheritance in law under the peculiar circumstances due to the remarriage of the widow two years after the death of Rios, Senior, and prior to the death of her son, Rios, Junior.

There was more or less dispute upon each of the four subjects above specified, but the two main points of contention were the amount of community property to which the widow

was entitled, and whether the mother took the inheritance from her son in fee or for life only.

As the private agreement further states (R., p. 85, paragraph 9) that its purpose was to make a division as near as might be into three equal parts, it is evident that the only concession made by the daughters was the mother's contention that she inherited from her son in fee while the mother on her part practically gave up her claim for separate property, which she admittedly contributed, for community property and for compensation for her long period of administration, which it is not reasonable to assume that she would give up without receiving something in return.

A further consideration for the execution of the private settlement may be found in the facts, stated in the opinion of the trial court (Record, p. 580) and conceded in the argument of counsel, that the lands in the Naguabo district had been derived by Rios, Senior, by inheritance while those in the Humacao district had been derived, in large part, *by purchase after marriage* of said Rios and during its continuance. By this private settlement the Humacao properties were set apart to the two sisters and the Naguabo properties to the widow. It must therefore be conceded that the widow had some unliquidated community claim to the Humacao properties which, by granting in full dominion to the daughters, she relinquished in their favor.

Liquidation a Prerequisite to Decreeing Any Title.

Opposing counsel rest their case upon their statement in the third paragraph of page 26 of their brief that "the only issue and controversy in this case related to the one-third interest of complainant's deceased brother." On the other hand, we contend that under the Spanish law the right of the widow to an interest in the community property *could not be denied* until an accounting and liquidation of the whole inheritance had demonstrated that no community

property existed, or until the necessity of such accounting and liquidation had been superseded by some voluntary agreement of settlement. The *presumption* of the law was that profit *had accrued* to the conjugal partnership, and that a widow *had some interest* on that account in the estate of her deceased husband, and the heirs could have no full title until a liquidation had proven the contrary or until the interest of the widow had been set apart out of the corpus of the inheritance. (See authorities cited on pages 125-127 of our main brief.)

It must be conceded that a Federal court has no jurisdiction to administer upon estates of deceased persons, and an accounting and liquidation attempted to be made by it would have been beyond its powers and could only be made in whatever insular court had probate or orphans' court jurisdiction, but whether so or not the court below concededly made no attempt to make such accounting (8th finding of fact, R., p. 590).

Therefore we contend that the legal conclusion stated in the 13th conclusion of law (R., p. 594) and the second and fifth paragraphs of the decree of the court below (R., p. 597) was erroneous—a question which counsel for appellee admit is open for review here under our 39th assignment of error (their brief, p. 27).

Conclusion.

In conclusion, we suggest to the court that the District Court of the United States for Porto Rico, on the equity side of which this suit was brought, has no distinctive chancery powers to entertain a suit where the right to relief is a purely equitable right not cognizable in a court of law and not conferred by any statute of Porto Rico. Opposing counsel admit, both in brief and argument, that such was its basis. The record shows, and counsel for appellee admit, that the title now recorded in the Registry of Property in Porto Rico, and which the decree below ordered canceled and annulled,

was a title obtained according to the Mortgage Law of Porto Rico, unless it can be invalidated by the court below as a fraud under its equity powers.

This court decided in Romeu *vs.* Todd (205 U. S.) that Congress by the act of April 12, 1900, intended to continue the local laws of Porto Rico, and especially the Mortgage Law, in full force, and that no power was by that act given the District Court of the United States for Porto Rico to give relief contrary to or in derogation of any of its provisions; hence that the doctrine of equitable *lis pendens* did not exist in that court as against a provision of the Mortgage Law providing for recording the pendency of a suit.

The doctrine of the *lis pendens* of a suit in equity is as well recognized a branch of the jurisdiction of our equity court as its jurisdiction to take cognizance of fraud as a ground for relief against transactions valid on the law side.

If that court has no equitable jurisdiction to enforce the *lis pendens* of chancery suits pending therein, is it clear that it has any equitable jurisdiction whatever where its exercise would interfere with the meaning or effect of any local statute?

If we understand the effect of the decision in Romeu *vs.* Todd, the court below could not cancel the records in the Registry of Property which had been properly inscribed according to the Porto Rican laws and decisions.

N. B. K. Pettingill,
George H. Lamar,
Counsel for Appellants.

GARZOT v. DE RUBIO.
BURSET v. SAME.
BURSET v. SAME.

APPEALS FROM THE DISTRICT COURT OF THE UNITED STATES FOR PORTO RICO.

Nos. 141, 142, 604. Argued February 27, 28, 1908.—Decided April 6, 1908.

The power of this court to review judgments of the District Court of the United States for Porto Rico given by § 35 of the act of April 12, 1900, 31 Stat. 85, is the same as that to review judgments of the Supreme Courts of the Territories and is controlled by § 2 of the act of April 7, 1874, 18 Stat. 27; on writ of error, therefore, this court is confined to such legal questions as necessarily arise on the face of the record, such as exceptions to rulings on the rejection and admission of testimony and the sufficiency of the findings to sustain the decree based thereon.

In this case the facts sustained the plaintiff's contention that she was a citizen of Spain and as to that point there was no ground for dismissal for want of jurisdiction.

A bill in equity to set aside an agreement adjusting a community between the widow and children, brought after the death of the widow who had also left children by a second marriage, held in this case, to be a liquidation of the community, and, although the property was derived solely from the first husband, the children of the second marriage were, as heirs of the mother, interested in her share and necessary parties to the bill.

In establishing a civil government for Porto Rico Congress by § 33 of the act of May 1, 1900, in scrupulous regard for local institutions and laws, preserved the local courts and recognized their jurisdiction over local affairs, including matters of probate jurisdiction.

By art. 62, par. 5, of the Porto Rican Code, power to administer estates is exclusively vested in the judge of the last place of residence of the deceased, and this includes all actions incidental to the liquidation of a community existing between husband and wife, and the District Court of the United States for Porto Rico has not jurisdiction of an action to set aside an agreement of liquidation of a community where the estates are still open in, and subject to the power and authority of, the local court.

THE facts are stated in the opinion.

Mr. N. B. K. Pettingill and *Mr. George H. Lamar* for appellants.

Mr. Francis H. Dexter and *Mr. Frederic D. McKenney* for appellee.

MR. JUSTICE WHITE delivered the opinion of the court.

These several appeals were taken by the various appellants from the same decree. We dispose of them together. The transcript is voluminous and confused. Following the order of the court below and the direction of the counsel for all the appellants, not objected to by the counsel for the appellee, the transcript contains all the proceedings, all the testimony offered at the hearing, together with the opinion as well as the elaborate findings of fact and conclusions of law by which the court below disposed of the case. The many assignments of error proceed upon the assumption that every question arising from the transcript is open for our consideration.

Our power to review is derived from § 35 of the act of April 12, 1900 (31 Stat. 85), which provides "that writs of error and appeals from the final decisions . . . of the District Court of the United States (for Porto Rico) shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations . . . as from the Supreme Courts of the territories of the United States." Our jurisdiction over causes coming from the Territories generally was thus stated in *Idaho & Oregon Land Co.* v. *Bradley*, 132 U. S. 509, 513:

"Congress has prescribed that the appellate jurisdiction of this court over 'judgments and decrees' of the Territorial courts, 'in cases of trial by jury, shall be exercised by writ of error, and in all other cases by appeal;' and 'on appeal, instead of the evidence at large, a statement of the facts of the case in the nature of a special verdict, and also the rulings of the court on the admission or rejection of evidence when excepted to, shall be made and certified by the court below,' and transmitted to this court with the transcript of the record. Act of April 7, 1874, c. 80, sec. 2, 18 Stat. 27, 28."

And, as pointed out in the same case (p. 513), followed since in a long line of cases:

"The necessary effect of this enactment is that no judgment or decree of the highest court of a Territory can be reviewed by this court in matter of fact, but only in matter of law. As observed by Chief Justice Waite: 'We are not to consider the testimony in any case. Upon a writ of error, we are confined to the bill of exceptions, or questions of law otherwise presented by the record; and upon an appeal, to the statement of facts and rulings certified by the court below. The facts set forth in the statement which must come up with the appeal are conclusive on us.' *Hecht* v. *Boughton*, 105 U. S. 235, 236."

While the suggestion that because there is no intermediate reviewing court between this and the District Court of the United States for Porto Rico, differing from what is generally the case in the Territories of the United States, a wider scope of authority should exist in reviewing by appeal the decrees of the District Court of Porto Rico, may have cogency, it affords no ground for disregarding the plain command of the statute of 1874, which is here applicable, as expounded by many previous decisions of this court. It follows that the greater part of the transcript is superfluous, and we therefore disregard it and confine our attention to such legal questions as necessarily arise on the face of the record, viz., to rulings concerning the rejection or admission of testimony duly excepted to, and to the sufficiency of the findings to sustain the legal conclusion or decree based on them.

The sole complainant, Maria Rios de Rubio, a widow, was averred to be "a resident of San Juan, Porto Rico, and a loyal subject of the King of Spain." There was no specific traverse of this averment. The court expressly found "that the citizenship and residence of the parties was as alleged in the bill of complaint." After the findings of fact had been made and the decree entered, and after an appeal by one of the parties, other of the defendants who had initiated appeals, but had not perfected them, moved for an extension of time to perfect

their appeals and for an opening of the decree, on the ground that when the bill was filed complainant was not a citizen of Spain but of Porto Rico, and, therefore, the court never had jurisdiction of the case. This motion was entertained by the judge then presiding, who succeeded in office the judge by whom the cause was tried. After hearing the evidence offered by both parties and analyzing the same, it was found that the complainant was a citizen of Spain as alleged. The motion to reopen was therefore denied. Without stopping to review the elaborate discussion of the subject on behalf of the appellants, we content ourselves with saying that we think the facts upon which the court based its action sustain that conclusion, and therefore the contention as to want of jurisdiction, because of the alleged absence of Spanish citizenship of the complainant, is without merit.

In approaching the merits we put out of view for the moment the many assignments of error which are addressed to rulings of the court admitting or rejecting evidence, and reserve for ulterior determination whether in view of the state of the record such objections are open, and if they are, whether any of them are well taken.

In order to a clear understanding of the origin of the controversy, we state the facts out of which it arose, confining ourselves to those shown by the pleadings or documents made a part thereof or established by the findings below.

José Maria Rios and Manuela Gutman were married in Porto Rico in 1866. There being no marital contract to the contrary, a legal community of property, as defined in the Spanish law, supervened between the spouses.

The wife at the time of the marriage had eight thousand pesos of separate money and the husband about half that amount. During the nine years which intervened, between the marriage and September 8, 1875, the husband had become the owner of various pieces of real estate, seven or eight of which were situated in the district of Naguabo, and one, or maybe two or more, in the district of Humacao. On Septem-

ber 8, 1875, the husband, Rios, died leaving surviving him his widow, Manuela, and three minor children, the issue of the marriage, viz., two daughters, the one Petronila and the other Maria, and a son, José. On the night of his death the husband executed a power of attorney, authorizing his wife to make a last will on his behalf, and on September 12 following, in virtue of this power, the wife executed the will. As the document was in no respect dispositive, but purely declaratory of the rule of legal succession, its effect on this controversy may be put out of view. By the law of Spain the three children were the heirs of the estate of their father, less the mother's share of the community estate, if any, subject to the usufruct of the mother on her husband's estate and subject to a marital fourth in favor of the wife, if the circumstances justified such an allowance. The widow instituted the necessary preliminary probate proceedings in the proper court to open the estate, and became executrix and the tutrix of her minor children and usufructuary of their estate, and, in one or both capacities, went into possession and control of the entire property, including in such property her community estate, if any there was. Two years after the widow married Miguel Bustelo.

In November, 1887, José, the son by the first marriage, being yet a minor, died intestate, and his mother, Manuela, instituted in the proper court proceedings concerning the estate of her deceased son. It may be conceded that the mother, as the immediate ascendant, was the sole heir of the son, to the exclusion of the sisters, the estate taken by her, however, being only usufructuary in character since at her death, as the estate of the son had come to him as part of his paternal inheritance (the succession of his father), it reverted to the sisters, children of the father—because of the principle of the Spanish law which took into account the source whence the estate of the son had been derived, for the purpose of regulating its transmission by death.

In 1890 the daughter Maria married one Rubio, and in 1898 Petronila, the other daughter, married one Noyas. In the

meanwhile five children were born of the marriage between Manuela Gutman and Bustelo, and the latter died, leaving surviving him his widow and these five children. From the death of the first husband, in 1875, to January, 1901, Manuela Gutman possessed and controlled all the property which she entered into possession of at the date of the death of her first husband, without rendering accounts of her administration to the court in which the estate had been opened, although that court had full power to control and direct her administration.

The daughters, before their marriage, generally lived with their mother and were educated and supported by her, and after their marriage received some allowance for their support, the extent of which need not be considered. It is undoubted that after their marriage dissatisfaction on the part of the daughters and their husbands ensued because of the failure of the mother to account and finally settle the estate of the father. This dissatisfaction culminated a short while before January 1, 1901, by the bringing of a suit in the District Court of Porto Rico, in which the succession of the father was pending, seeking to compel the mother to account and distribute the estate. In this suit the daughters were both represented by their attorney, Mr. Cuadra. Shortly after the commencement of this proceeding an asserted understanding was had between the mother and her daughters for the entire settlement of all matters relative to the property which had come into her possession and under her control, as the result of the death of her husband and her minor son, the issue of the first marriage. The settlement was embodied in a writing dated the sixteenth day of January, 1901, and signed by the parties and witnesses, among these witnesses being Mr. Cuadra, the lawyer of the two daughters, and Mr. Landron, a lawyer who represented the mother in the negotiations which preceded the agreement. The agreement, which is in the margin,[1] pur-

[1] First. Dona Manuela Gutman, widow of Bustelo, in her own proper right shall deliver immediately to her daughters by her first marriage, named Dona Maria Gaudalupe Rios, widow of Rubio, and Dona Petronila Patricia

ported by way of transaction to adjust all controversies as to the property between the mother and daughters, and to accomplish this purpose transferred to the mother in full owner-

Rios de Noya, all the lands and tenements comprised in the plantation known as "San José de las Mulas," situated in this jurisdiction, with the exception of a lot of land forty cuerdas in extent, belonging now to the succession of her second husband, Mr. Bustelo, and acquired by said succession at a public auction.

Second. In the same manner Senora Gutman shall immediately deliver to the above-named daughters of her first marriage the lands which form the estate called "Culo Prieto," in the jurisdiction of Naguabo.

Third. Dona Manuela Gutman shall retain for herself, and as sole and exclusive owner with all property rights, all the lands that may be found remaining in the jurisdiction of Naguabo, left at the death of her first husband, Don José Rios y Berrios, or, approximately nine hundred cuerdas.

Fourth. In view of the fact that by this instrument the co-ownership, existing until now, in the hereditary estate left at the death of the intestate Don José Rios y Berrios, becomes finally dissolved, it is by this settlement understood and agreed that each contracting party hereto becomes the exclusive owner of her share without reservation or limitation of any kind.

Fifth. As soon as this settlement shall be signed before witnesses by the contracting parties, without prejudice to its being converted into a public document within the space of forty-eight hours following the day of its date, or as soon as the notary of this town may return to his office, the lawyers of Mrs. Gutman and her daughters shall put a stop to all their mutual judicial proceedings, not only as to the voluntary suit touching the estate of Don José Rios y Berrios, but also as to all collateral and appellate matters.

Sixth. The lawyers, José Maria Cuadra and Rafael Lopez Landron, the first representing Dona Maria Guadalupe and Dona Petronila Patricia, and the second representing Dona Manuela Gutman, become hereby obliged to conclude this settlement in a manner which shall carry the same to conclusion without loss of time, so as to leave each interested party in full possession of what belongs to her by this agreement and furnished with their respective titles of property as inscribed in the books of the registry, free from every charge and lien.

Seventh. The expenses of this settlement, that is, the deeds, the expenses of registration, the means of ratifying this settlement before the courts, aside from the fees of the lawyers, shall be to the exclusive account of Dona Manuela Gutman.

Eighth. Moreover, on the occasion of this arrangement, which the interested parties esteem as highly convenient, Dona Maria and Dona Petronila find themselves satisfied with the correctness observed by their mother, in the very troublesome duty of preserving so large an estate for the term of so many years, in spite of the very serious difficulties overtaking the estate; the said Mrs. Gutman reserves to herself the right to present to her daughters

ship certain described properties, left by the first husband, situated in the district of Naguabo, and to the two daughters in joint equal undivided ownership a certain estate situated in Naguabo, and also a much larger estate situated in Humacao, both of which also at the death of the first husband stood in his name and had passed into the possession of his widow, in virtue of her administration or usufruct.

In April, 1901, Mr. Cuadra, as the attorney of the daughters Maria and Petronila, and Mr. Landron, as the attorney of the mother Manuela, instituted in the District Court of Humacao a proceeding under the Spanish mortgage law to have the legal title to the property referred to in the agreement put of record. The prayer was that the property referred to in the agreement and thereby transferred to the mother be placed of record in her name as the full owner thereof, and that the property referred to in such agreement, transferred to the two daughters, be placed in their names as the full owners. Conformably to

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solemn proof of the honesty with which she has acted up to this day, and a detailed and approved statement of the very grave misfortunes against which the estate has struggled during the long time in which she has administered it.

Ninth. Because of her being better acquainted than any other of the interested parties with the claims of all kinds which may now be pending or are to be established in favor of the estate left at the death of Don José Maria Rios y Berrios, Mrs. Manuela de Gutman is commissioned to continue or begin such reclamacions within the shortest time possible, it being well understood that the amounts obtained from these claims shall be considered into three equal parts for the advantage and use of Mrs. Gutman and her said two daughters by her first husband.

Thus the three contracting parties sign before the witnesses who are present and the lawyers, who likewise subscribe the same as parties thereto, in Humacao this 16th day of January, 1901.

(Signed) Manuela G., *Widow of Bustelo.*
Maria Rios, *Widow of Rubio.*
Petronila Patricia Rios De Noya.
Lawyer José Maria Cuadra.
Lawyer Rafael Lopez Landron.
Francisco Noya.
M. Argüeso.
Jesus Almiroty.

the Spanish law, citation was issued to other vicinal owners, and publication in the official gazette of a notice of the application was made under the order of the court. Before the application was acted upon by the court Cuadra withdrew as the counsel of record for the daughter Maria, and Mr. Juan F. Vias appeared on the record as her attorney, and filed in her behalf what is styled "in opposition to the proceedings." The motion by which this was done prayed that the "said proceeding . . . be approved in its main part with the expressed declaration that the properties acquired by Dona Manuela Gutman are so acquired as heir ab-intestate of her son José Rios Gutman and those belonging to his client and to her sister . . . from the inheritance of their deceased father . . . and that in case that this decision should not be deemed proper then that the approval of the proceedings brought be absolutely denied, for the reason that in the petition the true title of the acquisition of the properties adjudicated to the petitioner Senora Gutman, widow of Bustelo, is not set forth therein." In addition, in the record of the proceeding it is recited that for the purpose of the decision of the opposition which he made to the application for the registry of the titles in accordance with the agreement, the lawyer of Maria, Mr. Vias, "accepted as his own the evidence proposed by Lawyers Lopez Landron y Cuadra, with the addition of such documentary evidence as was filed by him and is attached to the record, which said evidence was admitted." The court, on November 16, 1901, allowed the petition for the registry of title according to the agreement and overruled the opposition. The considerations which led the court to this conclusion were thus stated by it:

"Whereas, in accordance with the provisions of sections 1809 and 1816 of the Civil Code, a compromise agreed upon and adjusted between capable persons upon a licit matter is not only a valid and efficient contract, but it further has for the contracting parties the authority of *res judicata;* and

"Whereas, the opposition to proceedings of dominio au-

thorized by section 395 of the mortgage law is that of third persons cited for the proceeding and introduction of evidence and in no manner can such opposition be made by any of the parties soliciting the said dominio; and

"Whereas, Dona Manuel Rios, I mean Dona Maria Rios, widow of Rubio, is one of the solicitors of the said proceeding, she has signed the compromise which is the basis for instituting the said proceeding, she has agreed upon the adjudication to each of the interested parties according to the terms of the compromise (clauses 3 and 4) she has accepted as her own the corroborative evidence of the very facts of the compromise and she cannot exercise legally against her own acts such actions as could be exercised by strange persons to the institution of dominio proceedings; and

"Whereas, it is left to the court to consider the weight of the evidence introduced and the allegations made approving or disapproving the claims made and making the declarations that the dominio has been justified; and

"Whereas, the court after a consideration of the true value and extent of the evidence introduced it is of the opinion that a writ of approval of this proceeding should issue."

The daughter Maria prosecuted an appeal to the Supreme Court of Porto Rico, sitting as a court of cassation.

We do not refer to many matters discussed at bar concerning the relations between the mother and her daughter Maria which took place pending the appeal, because those subjects are not referred to in the findings. In April, 1902, while the appeal was pending, the mother Manuela sold the properties which had been transferred to her by virtue of the agreement, and had been recorded in her name as full owner, to Victor Burset, who had married one of her daughters by the second marriage. Burset in turn sold the properties to Palmer, and mortgages were put upon them. Palmer sold some of the property to Garzot and Fuertes, and a portion of the land was sold by him to Petronila, the sister of Maria. In June, 1902, Mrs. Manuela Gutman died, and in the same month of the

same year the appeal taken from the decree of the District Court, ordering the titles recorded in accordance with the agreement, was affirmed by the Supreme Court. The court in its opinion, after reciting the appearance and opposition of Maria to the application to register the titles, concluded by observing:

"Considering that even supposing that the construction given by the trial court to article 395 of the mortgage law was erroneous, in holding in one of its conclusions of law that Dona Maria Rios could not oppose the proceeding of dominion because she instituted it in conjunction with her mother Dona Manuela and her sister Dona Petronila, the reversal of the order appealed from would not be proper, as it would be always sustained by the essential and necessary foundation of the same, which is the declaration made by the District Court of Humacao of having been proven the dominion of the properties in question, without any limitation or reservation whatsoever, which declaration cannot be discussed in cassation, because the appeal of cassation was not founded upon paragraph 7 of article 1690 of the Law of Civil Procedure. Considering that the order appealed from conforms to all the claims made by the parties and does not grant more than was prayed for, as it is thereby granted the prayer made by Dona Manuela Gutman and her daughters Dona Maria and Dona Petronila in the petition instituting the *ex parte* proceeding of dominion, and the claim made by Dona Maria through her attorney Don Juan F. Vias is denied."

Again, we do not stop to consider many matters referred to by counsel which it is deemed conclusively show that the daughter Maria accepted the decision of the Supreme Court as final, and acted upon the assumption that she was the owner of the property allotted to her by the agreement, because the matters thus relied upon are also but a part of the evidence and not embraced in the findings below made. About one year after the death of the mother and the decision of the Supreme Court of Porto Rico, the bill by which this cause was

commenced was filed on behalf of the daughter Maria, alleging herself to be a citizen of Spain. The only defendants made to the bill were her sister Petronila, Burset and his wife, Palmer and his wife, Garzot and Fuertes, and several others, who it was alleged had acquired an interest in the property sold by the mother to Burset and by him transferred as above stated. Demurrers were filed by some of the defendants. The court allowed the bill to be amended, and ordered that as amended it be rewritten. In substance the bill, as rewritten, alleged the death of the father, the leaving of the three minor children, herself included, the death of the brother, and the taking by the mother of the preliminary probate steps to administer the property, and the death of the mother. It alleged that at the time of his death the father had left certain property, which was specifically described, the property thus described being only that which had been transferred to the mother by virtue of the agreement. It was alleged that the complainant was the owner of an undivided half of the property thus described as heir of her father and brother, and "that the said property was separate property of said José Maria Rios, theretofore derived by inheritance from his father and mother and by purchase from his sisters with his separate funds." The bill then with great amplitude alleged a conspiracy and combination between the mother and sister Petronila to defraud the complainant by obtaining a title to the property described in order to benefit the children of the second marriage, and charged that the lawyers Landron and Cuadra, as parties to this conspiracy, had united with the mother and sister by deceit and fraud to secure the agreement, concealed or had misrepresented its contents, and, in furtherance of the same conspiracy, prosecuted the proceedings in the courts of Porto Rico. It then alleged that in execution of the said conspiracy the mother had sold the property transferred to her after the decree putting the title in her name had been rendered by the District Court; that Burset, the purchaser from her, and all those holding under him, were cognizant of the fraud and held

fraudulent and simulated titles. No reference was made in the bill, except inferentially, to the property which had been transferred to the complainant by the agreement and which had been put in her name in virtue of the decree of registry. The bill contained an allegation that a copy of the agreement could not be produced because it had been concealed from the complainant, and also contained a charge that the mother had refused to deliver to the complainant the property which had been transferred to her by such agreement. The prayer of the bill was for a decree recognizing complainant as the absolute owner of one-half the property described in the bill, that is, that which had been transferred to the mother; the annulment of the decree of the District Court of Porto Rico, executing the agreement; the erasure of the inscriptions of title resulting therefrom, and for the annulment of the sale to Burset, and all the transfers of title by sale, mortgage or otherwise consequent thereon. Shortly afterwards the bill was amended by detailed averments, charging that the proceedings in the District Court of Porto Rico for the registry of the title were wholly void, that they were instituted by Cuadra in the name of the complainant without authority and with full knowledge on his part that she did not accept the agreement, and consequently not only that decree but the affirmance thereof by the Supreme Court of Porto Rico were without effect upon the rights of the complainant. In accordance with these averments a prayer was inserted, asking that the decrees of both the Porto Rican courts and the registry of title consequent thereon be held to be void. In addition it was prayed "that an account be taken of all the foregoing properties and assets [referring to the properties which had been allotted to the mother by the private agreement], and all other properties in which complainant may have an interest; that a master be appointed to take such accounting and ascertain all the property, real, personal and mixed, belonging to the estate of Don José Maria Rios and Dona Manuela Gutman and Don José Rios y Gutman, and the participation or interest therein which corresponds

to your oratrix, and upon the filing of this report this court shall decree a partition and division thereof in the proportion of one-half to your oratrix, and shall declare by its decree the right of your oratrix as aforesaid in and to the same." Finally, after all the testimony was closed, just prior to the submission of the cause, the court allowed an amendment concerning the value of the pieces of property described in the bill, and which had been allotted to the complainant by the private agreement, and permitted the striking out of the averment that some of those properties had been purchased by the father from his sisters with his separate funds.

The various defendants pleaded *res adjudicata*, based upon the decrees of the District and the Supreme Court putting the agreement of record. Petronila, moreover, pleaded a judgment asserted to have been rendered in a proceeding which it was alleged had been brought by the complainant Maria in an insular District Court to set aside the agreement. Although the judgment thus pleaded purported to be annexed to the plea, it was not so annexed, and no reference to such judgment, if any, or to the suit in which it was rendered, is contained in the findings of fact below. The pleas having been overruled, answers were filed traversing all the charges of fraud as to the agreement, as to the proceedings to enforce the same, and as to the sales or contracts concerning the property which that agreement had transferred to the mother.

The court decreed the agreement to be void for fraud. It decided that the judgment of the District Court, affirmed by the Supreme Court, was void for the same reason. It therefore directed the erasure from the public records of the registry of title which had arisen from the inscription of the judgment. The complainant was held to be the perfect owner, not only of an undivided half of the property which had been allotted to the mother by the agreement, and which was described in the bill, but also a like owner of an undivided half of the property which the agreement had allotted to her, and it was directed that the judgment be inscribed in order to constitute

a muniment of title to the property. Among the findings of fact upon which the decree was based was one finding that although a liquidation and settlement of the estates of the father, mother and son had been prayed, such settlement was not essential, as full relief could be afforded without an accounting.

Before coming to consider such of the assignments of error as are within our cognizance, we are admonished that we must first determine whether the necessary parties are before us to justify us in deciding the case on the merits. And this inquiry also involves determining whether the necessary parties were before the court below to authorize it to make the decree which it entered.

Our duty in the matter was thus stated in *Minnesota* v. *Northern Securities Company*, 184 U. S. 199, 235:

"The established practice of courts of equity to dismiss the plaintiff's bill, if it appears that to grant the relief prayed for would injuriously affect persons materially interested in the subject-matter who are not made parties to the suit, is founded upon clear reasons, and may be enforced by the court, *sua sponte*, though not raised by the pleadings or suggested by the counsel. *Shields* v. *Barrow*, 17 How. 130; *Hipp* v. *Babin*, 19 How. 271, 278; *Parker* v. *Winnipiseogee Lake Cotton and Woolen Co.*, 2 Black, 545."

Again:

"The general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, are to be made parties to it, so that there may be a complete decree, which shall bind them all. By this means the court is enabled to make a complete decree between the parties, to prevent future litigation, by taking away the necessity of a multiplicity of suits, and to make it perfectly certain that no injustice is done, either to the parties before it, or to others who are interested in the subject-matter, by a decree which might otherwise be granted upon a partial view only of the real merits. When all the parties are before the

court the whole case may be seen; but it may not where all the conflicting interests are not brought out upon the pleadings by the original parties thereto. Story's Eq. Plds. sec. 72."

Whether the necessary parties are here or were before the court below involves a consideration of the case in a fourfold aspect: first, as to the agreement; second, as to the decrees of the District and Supreme Court; third, as to the contracts made by the mother or those holding under her in consequence of the agreement and the registry of the title which it created; fourth, as to the nature and character of the rights with which the agreement was concerned, and the effect of the relief sought in consequence of the prayer for the annulment of that agreement.

The agreement was made between the complainant, her sister Petronila and the mother. Now, although the bill was brought after the mother's death and alleged the existence of children of the second marriage, who were, of course, entitled to participate in their mother's estate, neither the estate of the mother nor such children of the second marriage were made parties to the cause. But either or both the estate and these children were necessary parties to the determination of the rights of the mother under the agreement. It is no answer to say they were not because the property with which the agreement was concerned came from the estate of the first husband, in which the mother and her children of the second marriage had no interest, since such an assumption but disregards the nature and character of the title created by the agreement, and therefore presupposes that its validity could be judicially determined in the absence of the parties whose rights were necessarily involved. And this is also true as to the judgments of the District and the Supreme Court of Porto Rico. The mother was not only a party to those judgments but a beneficiary thereof, and the presence of her estate or heirs was essentially necessary to a determination of whether those judgments were the result of fraud, and the nature and

extent of their operation upon the recorded title. Manifest also is it that the same reasoning is controlling as to the relief which the bill sought concerning the sale made by the mother to Burset of the property transferred to her by the agreement and held by others under or as a consequence of that sale. We say this because it is apparent that to determine the validity of the sale or sales in the absence of the estate of the mother or her heirs would be in effect to pass upon the rights of the estate or heirs without a hearing. Demonstrative as are the foregoing considerations as to the want of power in the absence of the estate of the mother or her heirs to annul the agreement and the title which apparently flowed therefrom, and to collaterally avoid the decrees of the Porto Rican courts concerning the same and to set aside as simulated and fraudulent the sales made in virtue of the title at least apparently vested by the agreement, they all become more controlling when the nature and character of the rights with which the agreement dealt are taken into view. Between the husband and wife, by virtue of the marriage, in the absence of a contract to the contrary, a legal community supervened. Porto Rican Civil Code, Art. 1315. And although the code was not in force in 1866, when the marriage took place, the same rule, as we have already said, was then controlling under the more ancient Spanish law. Partidas, 5 Ll. 57, 59. See also the statement of the ancient Spanish law on the subject in *Bruneau* v. *Bruneau*, 9 Martin (La.), 217. The community thus arising by operation of law embraced all "the earnings or profits indiscriminately obtained by either of the consorts during the marriage." Civil Code of Porto Rico, Article 1392. The community also embraced all "property acquired during the marriage by onerous title at the expense of the community property whether the acquisition is made for the community or for only one of the consorts." Article 1401. Besides it embraced in the joint ownership many other things which it is unnecessary to enumerate and which are fully set out in the articles of the code following those just cited. And the

code, for the purpose of protecting the community and securing a just liquidation of the respective interests in the same, expressly provides, Article 1407, that "All the property of a marriage shall be considered as community property until it is proven that it belongs exclusively to the husband or to the wife." Although the presumption thus created was not expressed in the text of the Partidas, it was from ancient times a part of the Spanish law, having been declared in Ley, 203, Del Estilo (A. D. 1566), and such presumption common to both the Code Napoleon and the Louisiana Code (Code Napoleon, Art. 1403; Louisiana Code, Art. 2405), was, in express terms, embodied in Law 5, title 4, book 10, of the Novisima Recopilacion. In speaking of the ancient Spanish law on the subject in *Savenat* v. *Le Breton*, 1 Louisiana, 520, 522, the court said:

"This question must be decided according to the Spanish laws relating to rights which subsist in the marriage state between the parties to the matrimonial contract. By these laws everything purchased during the marriage fell into the common stock of gains, and at the death of either of the parties was to be divided equally between the survivor and the heirs of the deceased. And this effect was produced whether purchases were made with the money or capital of the community or with that of either of the married parties, whether in the name of both, or that of one of them separately. See Febrero add. part 2, lib. 1, chap. 4, sec. 1, no. 6."

And the text of the Novisima concerning the presumption was expounded and applied by the Supreme Court of Spain on May 7, 1868, in a case which came before it from Havana. Jurisprudencia Civil, vol. 17, No. 124, pp. 435–439. It is undoubted that all the real estate to which the agreement related was acquired by the husband after the marriage, and therefore was controlled, generally speaking, by the presumption of community. True it is, that the bill, as originally drawn, alleged that some of the property which was transferred to the mother by the agreement was acquired by in-

heritance by the husband and others by purchase, and that just before the hearing the court permitted an amendment striking out the words "by purchase," so as in effect to cause the bill to allege that the property transferred to the mother by the private agreement had been acquired by the husband by inheritance. But no averment tending in any way to deflect the legal presumption of community as to property acquired during marriage was made concerning the property allotted to the daughters, by the agreement, and which the bill, as amended, sought to administer and distribute. This being the case, it follows that the necessary effect of the bill, as amended, was to assert that, notwithstanding the legal presumption of community, the interest of the deceased wife in the property could be determined without the presence of her estate or of her heirs who were directly interested.

It does not meet this difficulty to suggest that the effect of the agreement was to close the question of community, since the ground upon which the relief was sought was that the agreement was void. Nor is there merit in the suggestion that the presence of the estate of the mother or her heirs was not necessary because the court below found as a fact either that there was no community property, or if there was, that no accounting or liquidation was essential. But these findings could not be made in the absence of the estate of the mother or her heirs without in effect denying a hearing to those vitally interested.

While the considerations previously stated establish the impossibility of affirming, and the necessity for reversing and remanding, they also engender the inquiry whether, in view of the nature and character of the relief sought by the bill, it is our duty to remand for a new trial, or with directions to dismiss the bill because of an inherent want of jurisdiction to give the relief which the bill sought.

Putting out of view for a moment the averments and prayer of the bill relating to the nullity of the private agreement, and the sales made of the property which was transferred by that

agreement to the mother, we think it is patent on the face of the bill that it but invoked the authority of the court to exercise purely probate jurisdiction by administering and settling the estate of Rios, the estate of his son, and that of the mother, and, as an incident thereof, to liquidate the community which had existed between Rios and his wife. Indeed, such was exactly the substantive relief which the bill as finally amended prayed. As by the bill it is alleged that on the death of the father and brother probate proceedings concerning both estates had been commenced in the proper Porto Rican court, it results that not only did the bill seek to administer the estates through the court below, but it sought also to do so, although the estates were open in the local court and subject to the power and authority of such court. In establishing a civil government for Porto Rico, Congress, scrupulously regarding the local institutions and laws, by § 33 of the act of April 12, 1900, preserved the local courts, both original and appellate, and recognized their power and authority to deal generally with all matters of local concern. In creating by the thirty-fourth section of the same act the District Court of the United States for Porto Rico, the jurisdiction and power of that court, we think by the very terms of the act, were clearly fashioned upon and intended to be made, as far as applicable, like unto the jurisdiction exercised by the Circuit and District Courts of the United States within the several States of the Union. It is true that the jurisdiction of the District Court, resulting from citizenship, has been made broader than that conferred upon the Circuit and District Courts of the United States within the States. But this does not tend in any way to establish that it was the purpose of Congress, in creating the District Court of the United States for Porto Rico, to endow that court with an authority not possessed by the courts of the United States (*Farrell* v. *O'Brien*, 199 U. S. 89), to exercise purely probate jurisdiction to administer and settle estates in disregard of the authority of the local court as created and defined by law.

By the Porto Rican Code of Civil Procedure (article 62, paragraph 5), power to administer estates, both testamentary and intestate, is vested in the judge of the last place of residence of the deceased. That the power thus conferred is exclusive is shown by the text of the same article and by the comprehensive grant of authority embraced in the provisions of the code which follow, relating to the settlement of both testamentary and intestate successions. That it embraces authority to entertain and dispose of all actions, whether real or personal, necessarily incidental to the accomplishment of the powers granted over estates, is shown by the provisions of article 1001 of the same code. The similarity between the provisions of the Louisiana code as to the community and the analogy which obtains between the provisions of the Louisiana Code of Practice and the Code of Civil Procedure of Porto Rico, concerning the power of the judge or court charged with the administration of estates, whether testamentary or intestate, especially where questions concerning the liquidation of a community, which has existed between husband and wife, is concerned, make pertinent the observations of the Supreme Court of Louisiana in *Lawson et ux.* v. *Ripley,* 17 Louisiana, 238, 248, where it was said:

"The succession of the husband, is therefore so far connected with the community as to form together, at the time of his death, an entire mass called his estate, which is not only liable for the payment of the common debts, but also for the portion of the wife or her heirs to the residue, if they have not renounced. The widow or her representatives have consequently such an interest in the mass of the estate or succession of the husband, with regard to whom no distinction is made between his separate property and that of the community until the net proceeds or amount of the acquets and gains are ascertained, that their assistance at the inventory and their concurrence at all the proceedings relative thereto, which are to be carried on contradictorily with them, are generally required. All such proceedings take place before the court of probates who,

according to law, has exclusive jurisdiction of all the matters concerning the estate, particularly in those cases where it is in a course of administration and it does not occur to us that separate proceedings can properly be had in relation to the community, until after the settlement of the husband's estate and the payment of the common debts, and division of the residue of the acquets and gains is to be made between the heirs of the deceased and the surviving spouse; and even then the affairs of the husband's estate, administered under the control and supervision of the court of probates, are to be inquired into and sometimes fully investigated."

True it is that by article 1046 of the Porto Rican Code of Civil Procedure the parties interested in an estate which is unsettled and under the dominion of the proper court are given power to terminate the estate by a voluntary agreement between them, and that such may have been the effect of the agreement between the parties here in question if the same was valid. But as the bill charged and the relief which it asked was based upon the conception that the agreement was void, it follows that the relief which the bill sought could only have proceeded upon the hypothesis that the estate had not been closed, and was yet subject to be administered in the proper court. And that this was the theory of the bill is shown by the prayer that the court appoint a master to liquidate and settle the estates.

Coming to consider the subject from the point of view of the averments as to the nullity of the agreement and the fraudulent simulation of the sales, it is clear that the relief sought in this regard was merely ancillary to the prayer for the liquidation and settlement of the estates. As we take judicial notice of the fact that the distinctions between law and equity in a technical sense do not obtain in the local law of Porto Rico, and as under that law a court charged with the administration of an estate is one of general as well as probate jurisdiction and has full power over all personal and real actions

concerning the estate, it follows that the local court had in the nature of things power to determine, as an incident to its general and probate authority, whether the estate had been closed by the agreement, and hence to decide whether that agreement was void, and had also jurisdiction and power to determine whether the property which had been transferred to the mother by the agreement yet remained a part of the estate, and as an incident to so doing to decide the questions of fraud and simulation which were alleged in the bill. Of course, the general scope of the authority which the court then possessed endowed it with the power to liquidate and settle the community which existed between the husband and wife, as that liquidation was of necessity involved in the settlement of the estate. Speaking on this latter subject in *Lawson et ux.* v. *Ripley, supra,* the Supreme Court of Louisiana said (p. 249):

"But it is contended that this would be giving to the court of probates the right of trying questions of title. Probate courts have certainly no power to try titles to real estate, and to decide directly on the validity of such titles; but as this court has said in the case of *Gill* v. *Phillips et al.*, 6 Martin N. S. 298, 'those courts possess all powers necessary to carry their jurisdiction into effect, and when in the exercise of that jurisdiction questions arise collaterally they must, of necessity, decide them, for if they could not no other court could.' And, 'any other construction would present a singular species of judicial power—the right to decree a partition, without the authority to inquire into the grounds on which it should be ordered, or the portions that each of the parties should take. The end would thus be conceded without the means.' *Baillo* v. *Wilson,* 5 Martin N. S. 217. We are satisfied that whenever a question of title to real property and slaves arises collaterally in a court of probates, and an examination of it becomes necessary in order to give the court the means of arriving at a correct conclusion on matters of which it has jurisdiction, it must take cognizance of such title at least for the purpose of